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WOLSTENHOLME & CHERRY'S CONVEYANCING STATUTES, &c.

IN TWO VOLUMES.

VOL. I.

AN INTRODUCTION TO THE NEW ACTS.

THE LAW OF PROPERTY ACTS, 1922, 1924, and 1925, with Notes.

THE LAND CHARGES ACT, 1925, with Notes, and a Chapter on Searches Generally.

VOL. II.

THE SETTLED LAND ACT, 1925, with Notes.

THE TRUSTEE ACTS, 1888 AND 1925, with Notes.

THE ADMINISTRATION OF ESTATES ACT, 1925, with the parts of THE SUPREME COURT OF JUDICATURE (CONSOLIDATION) ACT, 1925, taken therefrom, with Notes.

THE MARRIED WOMEN'S PROPERTY ACTS, 1882 to 1908, with Notes.

STATUTORY RULES, FORMS, ORDERS, &c.

ELEVENTH EDITION

BY

SIR BENJAMIN LENNARD CHERRY, LL.B.,
OF LINCOLN'S INN, ONE OF THE CONVEYANCING COUNSEL OF THE COURT;

JOHN CHADWICK, M.A., LL.B.,
OF THE INNER TEMPLE,

AND

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BARRISTERS-AT-LAW.

Vol. I.

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TO

THE RIGHT HONOURABLE FREDERICK EDWIN
EARL OF BIRKENHEAD,

HIS MAJESTY'S PRINCIPAL SECRETARY OF STATE FOR INDIA,

FORMERLY LORD HIGH CHANCELLOR OF GREAT BRITAIN,

TO WHOSE CONSUMMATE ABILITY AND DETERMINATION THE

PASSING OF THE PARENT ACT OF 1922 MUST BE ATTRIBUTED,

THIS EDITION IS,

BY KIND PERMISSION,

RESPECTFULLY

DEDICATED.

prominent part in this legislation—for instance, the late Mr. E. P. Wolstenholme, the originator of the germ, Lord Haldane, the first Lord Chancellor to bring his potent genius to bear on the subject, the late Sir Philip Gregory, the Chairman of his Committee, Sir Frederick Liddell, K.C.B., the first Parliamentary counsel, to whom so much of the artistry in draftsmanship and clear arrangement is due, Sir Charles F. Brickdale, the late Chief Land Registrar, and Mr. Edward H. Benn, one of the Conveyancing Counsel of the Court, who together undertook the task of throwing light on what was then the somewhat obscure subject of land charges, Sir Leslie Scott, K.C., M.P., the Chairman of the Departmental Committee who reported to Lord Birkenhead, then Lord Chancellor, with such practical results as could hardly have been anticipated, his Deputy-Chairman, Sir Arthur Underhill, the senior Conveyancing Counsel of the Court, from whom sprung so many fertile suggestions, Sir Claud Schuster, K.C.B., the Lord Chancellor's Permanent Secretary, whose Parliamentary experience has been indispensable, and Mr. Justice Romer, the Chairman of the expert Committee appointed by the Lord Chancellor (Viscount Cave) to consider and report on the Consolidating Bills, the success of whose labours was proved when the Bills finally came before the Joint Committee of both Houses, presided over by Lord Muir Mackenzie, to receive the last polish—is sufficient to show that an immense amount of talent has been employed in the production of these Acts.

The subject, however, is so vast that it would be fatuous to suppose that, after a practical test, some amending legislation will not be required. In the meantime the Acts can be safely left to the tender mercies of the Courts to construe in accordance with their wide spirit.

That a workable scheme has been produced appears to be generally admitted; much, however, depends on everyday practice. For ten years from 31st December, 1925, the conveyancing members of the legal profession will be on their trial. If they fail to make the best use of the system to save time, costs and unnecessary labour, it seems inevitable that Orders in Council will be made for the gradual introduction of compulsory registration

of title throughout the country. But whether or not the book-keeping system ultimately proves its superiority, the reforms effected will not have been made in vain, for many years must elapse before the titles to all the land in this country can be placed on a register. In the meantime the process of simplification of titles will continue; indeed, the title of each purchaser should be improved, seeing that vendors are no longer permitted, by special conditions, to force bad titles on purchasers. The getting in of outstanding legal estates and placing them in the persons entitled thereto, under the new law, will enable a good start to be made.

The idea that the whole legal profession will have to go to school again has caused some unnecessary consternation; it is true that at some time they will have to consider the Acts or parts of them, to acquire a working knowledge of the general principles and change in practice, but their existing knowledge will stand them in good stead, for, as a rule, the existing principles, applicable either to real or personal estate, have been adopted, particularly in matters involving an assimilation of the two branches of the law.

It was at one time questioned whether the simplified form, suggested by Mr. Edward H. Benn, of a legal mortgage would be adopted in practice; but when it was realised that a mortgagee thereunder would be in the same position as a mortgagee by demise or sub-demise under the new law, the doubts were resolved.

Again, when the precedent books appear, it will be clear to all that the forms to which the profession have been accustomed, though shorter and simpler, retain their essential features, though any attempt to carry on under the old practice is necessarily doomed to failure.

After such a heavy repast of legislative matter, the profession may well yearn for a period for digestion. Certain branches of the law affecting property remain, however, for treatment at no very distant date.

For instance, the Married Women's Property Acts call for revision and consolidation. Now that a widow will, on the intestacy of her husband leaving issue, become entitled to a first charge of 1,000*l.* on his estate, as well as a life interest in a moiety of the residue, it is

only right that she should be subject to the same liability for the maintenance of his children by any marriage as a widower would be subjected to in regard to the children of his late wife.

Enactments relating to wills and limitation of actions can be found in the most unexpected quarters, hence consolidation is obviously indicated. When this task is undertaken it is certain that some amendments will become necessary.

Then, again, the Charitable Trust Acts should be brought up to date and the difficulties arising in connexion with the vexed subject of "mixed charities" should be solved on broad lines.

It has been necessary to publish this edition in two volumes. First, because an attempt to crowd the new Acts and the requisite notes thereto into one volume would have produced an unwieldy book, and, secondly, because the profession were calling out for something on account, and it was impossible to give them the whole of the material literature until the Rules, Orders, &c. had been published in final form.

This decision has made it possible to publish Vol. I. in advance, leaving Vol. II., which, with the Settled Land Act, the Trustee Acts, the Administration of Estates Act and the Married Women's Property Acts, will contain the Rules, Orders, &c., to be published when these are finally issued. The Land Registration Act, 1925, is left to be dealt with by "Brickdale and Stewart-Wallace."

With the addition of so much new matter, it cannot be expected that this edition will be free from errors and omissions; the Editors will welcome any suggestions which may be useful in the preparation of a subsequent edition.

LINCOLN'S INN,
September, 1925.

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S. L. A., 1889	means	The Settled Land Act, 1889.
S. L. A., 1890	„	The Settled Land Act, 1890.
S. L. A., 1925	„	The Settled Land Act, 1925.
S. L. R. (No. 2) A., 1893	„	The Statute Law Revision (No. 2) Act, 1893.
S. L. R. A., 1894	„	The Statute Law Revision Act, 1894.
S. L. R. A., 1908	„	The Statute Law Revision Act, 1908.
Succ. D. A., 1853	„	The Succession Duty Act, 1853.
T. A., 1850	„	The Trustee Act, 1850.
T. A., 1852	„	The Trustee Act, 1852.
T. A., 1888	„	The Trustee Act, 1888.
T. A., 1889	„	The Trust Investment Act, 1889.
T. A., 1893	„	The Trustee Act, 1893.
T. A., 1894	„	The Trustee Act (1893) Amendment Act, 1894.
T. A., 1925	„	The Trustee Act, 1925.
V. & P. A., 1874	„	The Vendor and Purchaser Act, 1874.

ADDENDA.

Page 10, line 30; n. to L. P. A., 1922, s. 128 (1):—

As to the abolition of frankalmoign tenure: Ad. of E. A., 1925, 2nd Sch., repealing part of 12 Chas. 2, c. 24.

Page 293, line 30; n. to L. P. A., 1925, s. 97:—

Equitable "mortgages or charges . . . of land" cannot be within the jurisdiction of a local deeds registry: s. 11, *sup.*; hence when they are "general equitable charges" within L. C. A., 1925, s. 10, Class C. (iii), they must be registered as land charges to acquire priority under this s.

This s. does not apply to an equitable charge which arises or affects an interest arising under a trust for sale or a settlement. The priority of a charge arising under trusts affecting proceeds of sale or under a settlement is governed by the instrument creating the charge. The priority of a charge affecting an interest so arising (being a dealing with an equitable interest) is governed by notice under s. 137, *inf.*

Page 587, line 32; n. to L. C. A., 1925, s. 10 (6):—

Where a document transfers or creates a legal estate in Yorkshire, and creates or contains an equitable charge, restrictive covenant, equitable easement or estate contract (*e.g.*, an option to purchase), then a memorial of the document must be registered (L. P. A., 1925, s. 11), and a concurrent application should be made to register the land charge in the local registry: L. C. R., 1925, r. 15.

Where no legal estate is transferred or created by the document, it will be expedient to register the land charge at the Land Registry.

THE NEW ACTS.

INTRODUCTION.

The new Acts.

THE Acts of 1925 dealt with in this edition consolidate many enactments relating to the law of property, conveyancing, settled land, trusts, land charges and administration of estates. This consolidation was rendered necessary by the epoch-making amendments of the law effected by Lord Birkenhead's Act of 1922, as varied by the L. P. (Amend.) A., 1924.

Objects of amendments.

The main objects of the amendments are to assimilate the law of real and personal property whenever practicable, and to simplify and improve the practice of conveyancing. For many years past the ideal of law reformers has been to enable land to be dealt with as readily as stocks and shares, subject to the necessary modifications inherent to the subject-matter.

Difficulties to be met.

The main difficulties hitherto encountered with which the Acts deal were:—

(1) The multiplicity of tenures and local customs affecting modes of disposition and devolution.

(2) The multiplicity of legal estates, all able to subsist at the same time, either successively or concurrently.

(3) The equitable doctrines under which purchasers were affected by any equitable interest of which they had either express or constructive notice, unless that interest could be overreached by the conveyance.

How dealt with.

The general lines on which these difficulties are disposed of are as follows:—

(1) Copyhold and customary tenures are converted into common socage tenure.

(2) The interests in land capable of subsisting as legal estates are reduced in number, all other interests being allowed to take effect as equitable interests.

(3) The legal estate is no longer divisible into undivided shares, but the entire estate will vest in trustees on trust to sell it, with full power to postpone sales and deal with the land pending sale.

(4) The overreaching powers of estate owners (*i.e.*, owners of legal estates) have been extended on well-recognised lines, pro-

(5) That copyholds for years are made to take effect as leaseholds for years.

(6) That manorial incidents, affecting other land besides copyhold land, are to be extinguished in the same way as the incidents affecting copyholds.

(7) That the lord's interest in minerals, sporting rights, fairs, markets and franchises are unaffected by the enfranchisement, but by agreement may be acquired by the owner of the land.

(8) That manors and courts baron are not destroyed, but the owner of the land retains his rights of common.

(9) That a mortgagee of the copyhold inheritance takes a mortgage term in place of the fee simple.

(10) That owners of interests capable of subsisting as legal estates derived out of the fee simple, such as perpetual rentcharges, terms of years and easements, take legal estates corresponding to those interests.

(11) That beneficial interests are not interfered with, save that where, for want of a custom to entail, a fee simple conditional on the birth of issue has been created and has not become absolute, the owner thereof will, in equity, take an entailed interest.

(12) That a purchaser of enfranchised land will not require proof of the lord's title to enter into a compensation agreement: L. P. A., 1925, s. 44 (7); though the title to acquire the land must be proved in the usual manner; for this purpose the purchaser requires power to inspect and make copies of the Court rolls; this is given by L. P. A., 1922, s. 144.

Construction.

For the purposes of the Consolidating Acts, the reduction of tenures to freehold and leasehold for years is deemed to have taken place before 1926: L. P. A., 1925, s. 202.

Extinguishment of manorial incidents.

The points to note in connexion with the subsequent extinguishment of manorial incidents are set out in Chap. I.

Conversion of perpetually renewable leaseholds into long terms.

Obligation to produce lease before 1927.

In the same chapter the effect of the conversion of perpetually renewable leaseholds into long terms is discussed; the obligation to produce the lease or underlease, or any assignment of part of the property to the lessor, and to agree the additional rent before the 1st January, 1927, should be specially noted.

Conversion of leases for life into terms of ninety years.

Under the L. P. A., 1925, s. 149 (6), leases at a rent or in consideration of a fine terminable on or by reference to the death or marriage of any person, whenever made, take effect as leases for a term of ninety years, determinable after death or marriage, as the case may be, by at least one month's notice in writing on either side.

These provisions do not affect the creation of a term depending on life for securing the payment of money under a settlement,

nor do they apply to an equitable interest under a settlement for mortgage, indemnity, or other like purposes, for these equitable interests can and will be overreached by a tenant for life on the exercise of his statutory powers.

A contract to grant a lease determinable on or by reference to a death will, after 1925, be satisfied by the grant of a term for ninety years terminable by notice. Contracts to grant leases for lives.

General Principles as to Legal Estates.

Tenures having thus been reduced to two, namely, freehold and leasehold for years, the L. P. A., 1925, Pt. I., carries the simplification a step further, by reducing the possible legal estates in land to two, namely, a fee simple absolute in possession and terms of years absolute: ss. 1, 205 (1). Legal estates reduced to two.

These, however, include corresponding estates in easements, rentcharges, land tax and tithe rentcharges: s. 1; also charges by way of legal mortgage (s. 87) and rights of entry in respect of a legal term or annexed to a legal rentcharge: s. 1. Fees simple liable to be divested under the Lands Clauses Act, the School Sites Acts, or other similar statutes, and fees liable to be determined by the dissolution of a corporation, remain legal estates under s. 7. All other interests, including interests terminable with life, take effect as equitable interests: s. 1, 1st Sch., Pt. I. Legal interests and powers.

After 1925 a legal estate cannot be split into legal life estates, remainders, &c.; to this extent it is indivisible. Legal life estates, &c. abolished.

Similarly, a legal estate vested in A. cannot be appointed by B., for powers of appointment take effect in equity: s. 1. Thus the basis of conveyancing is shifted from powers to estates. There are, however, exceptions to this rule. For instance, a legal mortgagee may convey the fee simple or, subject to one exception, the head term affected by his mortgage: ss. 88 and 89. Also the effect of certain statutory powers (s. 7 (3)), powers of leasing (s. 8) and of vesting declarations and vesting instruments are saved so as to remain capable of transferring legal estates, while donees of powers of attorney are encouraged to execute in the names of their principals. The main points to note are that the Statute of Uses having been repealed, powers which would have operated thereunder, or by analogy thereto, are no longer capable of passing a legal estate, while the passing of a legal estate, whether *inter vivos* (*e.g.*, by a vesting deed when the ownership of settled land is changed) or on a death (*i.e.*, by means of an assent in writing), will be evidenced by some instrument in writing. Powers operate in equity.

Definition of term of years absolute.

The definition of a "term of years absolute" in s. 205 (1) (xxvii) must be carefully studied; the main point to note is that it does not include a term terminable with life, or with the termination of a terminable life interest; the object being to keep matters of pedigree off the title. It need not take effect in immediate possession. The word "absolute" does not mean that the term cannot be used for mortgage purposes; indeed, terms are specially indicated for use in this way; nor that it cannot be determined by notice, nor that, when the purposes of the term are satisfied, it will not cease.

Rules for distinguishing legal estates and equitable interests.

In order to ascertain whether or not an interest in land is a legal estate or equitable interest, two questions must be borne in mind—first, is it an interest capable of subsisting as a legal estate? This is a question which did not often arise under the old law. And secondly, was it created in a manner authorised for the purpose of creating a legal estate? Thus—

(1) If the interest consists of a fee simple absolute in possession, or a term of years absolute, or an equivalent interest within L. P. A., 1925, s. 1, as extended by s. 7, then it may be a legal estate, but it does not follow that it must be.

(2) If the interest does not come within rule (1), then it is not "capable of subsisting as a legal estate," hence it must be an equitable interest. This accounts for what will, after 1925, be the largest class of equitable interests.

(3) Even though the interest "is capable of subsisting as a legal estate," the legal estate may be outstanding; for instance—

(a) a devisee or legatee takes an equitable interest till the personal representative in writing assents to the legal estate passing to the devisee or legatee; or

(b) it may have arisen under a settlement (*e.g.*, a portions term), or under an instrument declaring the trusts of the proceeds of sale of land held on trust for sale, and the estate owner or trustees for sale may not have given legal effect thereto; or

(c) it may have been created under an equitable power, and may not have been clothed with a legal estate by the estate owner.

Infants cannot be estate owners.

One of the essentials of the new system is that there should be an estate owner capable of making title to a legal estate, accordingly infants are prohibited from holding legal estates, either beneficially or in any other capacity: L. P. A., 1925, ss. 19, 20; 1st Sch., Pt. III.; S. L. A., 1925, ss. 26, 27; 2nd Sch., para. 3; Ad. of E. A., 1925, s. 20, now replaced by the Jud. A., 1925, s. 165, and repealed, *ib.*, 4th Sch.

Tenancies in common abolished.

As a legal estate can no longer be split up into life estates and remainders, so legal estates in undivided shares in land are abolished. This far-reaching reform is effected by vesting the land, when in possession, in trustees for sale and making the beneficial interests attach to the proceeds of sale or the rents and profits until sale: ss. 34—38; 1st Sch., Pts. IV. and V.; S. L. A., 1925, s. 36, respecting settled land held in undivided shares.

Joint tenancies.

Tenants for life of full age, trustees for sale or personal representatives, may hold the legal estate as joint tenants. But where a legal estate is held in trust for, or is vested in, persons as joint tenants absolutely and beneficially entitled, *e.g.*, partners, it is treated as being held on trust for sale: L. P. A., 1925, s. 36. Similarly, where an infant is beneficially entitled to a legal estate jointly with another person of full age: *ib.;* for this is not settled land: S. L. A., 1925, s. 26 (4). Without affecting beneficial interests, tenancies by entireties (there must be very few subsisting) are converted into joint tenancies: L. P. A., 1925, 1st Sch., Pt. VI. The land will accordingly be held on trust for sale: s. 36.

Vesting of legal estates on 1st Jan. 1926.

Legal estates are, by L. P. A., 1925, 1st Sch., Pts. II. to VIII., vested in the persons of full age who ought to hold them. For instance, in the case of enfranchised land, the true owner, not the nominees on the Court rolls, acquires the legal fee simple. Again, in the case of encumbered estates, the owner of the equity of redemption acquires the fee simple or the term of years absolute, while the mortgagees are given mortgage terms. In a case such as that in *Sands* to *Thompson*, 1883, 22 Ch. D. 614, where the mortgagee has neglected to reconvey, the fee simple would vest in the mortgagor, while the mortgagee would take no interest in the land. Where land is vested in trustees for sale in trust for persons absolutely entitled to the proceeds of sale, the legal estate is not taken out of the trustees: 1st Sch., Pt. II., para. 3, for the trust for sale is still subsisting: s. 23. Where only a contract is subsisting when the Act comes into force there must still be a conveyance to give effect to it: 1st Sch., Pt. II., para. 7 (j).

Purchaser will insist on acquiring a legal estate.

It is absurd to suppose that conveyancing can, after the Act comes into force, be carried on in the same way as before, for a purchaser can and will insist on obtaining the legal estate: s. 42. To do so he must either deal with an estate owner, or acquire title under one of the modes authorised by ss. 7 (3), 8 and 9.

Concurrent legal estates.

Any number of legal estates may subsist concurrently in the same land; thus, A. may have the fee simple in possession, B.

an easement for a legal estate, C. the tithe rentcharge, D. a lease for ninety-nine years, E., F. and G. mortgages either by way of demise or by a legal charge, called a charge by way of legal mortgage, and so on.

Overreaching or Defeating certain Interests.

Conveyances by estate owners.

Statutory overreaching powers.

The owner of a legal estate, called an estate owner, may convey his estate, for instance, under a trust for sale or by virtue of the S. L. A., 1925, so as to overreach certain estates and interests affecting that estate, whether created before or after the trust or settlement, but to do this he must comply with the requirements of L. P. A., 1925, s. 2, that is to say, if the sale is made under a trust for sale there must either be not less than two trustees or a trust corporation to give a receipt for the proceeds, or if the sale is made under the S. L. A., 1925, there must be not less than two trustees or a trust corporation to receive the capital money. The effect of the overreaching powers of a tenant for life is shown in S. L. A., 1925, s. 72. If there is a compound settlement, title must be made thereunder: *ib.*, s. 1.

These overreaching powers are also exerciseable by trustees for sale (*i.e.*, persons holding on trust for sale) and by personal representatives: L. P. A., 1925, s. 28; Ad. of E. A., 1925, s. 39.

Shifting effect of overreaching provisions.

The interests so overreached are those which can be made to attach to the proceeds of sale; they do not include interests, such as easements, for which there is no money equivalent.

Legal mortgagees.

Legal mortgagees selling or leasing under their powers (L. P. A., 1925, ss. 88, 89, 99, 101, 104) come within the same category, for they are liable to account for the balance of the proceeds of sale: *ib.* s. 105.

Notice not material.

The overreaching provisions may be properly distinguished from the defeating provisions, as they operate independently of notice; still, much has been done to save a purchaser in good faith from the inconveniences resulting from notice.

Interests defeated for want of registration.

An estate owner, though not having the overreaching powers, may by his conveyance defeat interests which ought to have been protected by registration under the L. C. A., 1925, or some other statute, but without prejudice to personal remedies against persons other than the purchaser. Charges for death duties (L. P. A., 1925, s. 17) and "puisne mortgages" within the L. C. A., 1925, s. 10, Class C. (i), namely, legal mortgagees unprotected by deposit of the material documents relating to the title, now come within this second class.

Equitable interests defeated

The incidents of a legal estate are kept alive: L. P. A., 1925, s. 1 (4); it follows that if an estate owner, including a chargee

by way of legal mortgage, grants a legal estate to a purchaser without notice of an equitable interest, that purchaser will take free therefrom: *ib.* s. 2 (5). The overreaching provisions are further explained *infra*. for want of notice.

The Curtain Provisions.

What are known as the curtain provisions, because they mask the interests which can be overreached, can be divided into three principal classes. First, those which arise under a trust for sale; secondly, those which arise under settlements; and thirdly, those which arise on death. A fourth class might be added, namely, where title is made under an order of the Court. The three classes.

As respects trusts for sale the principle is not new, it is well established that a purchaser from trustees for sale is not concerned with the beneficial interests affecting the proceeds of sale, whether or not he has notice. Those interests attach to the proceeds whether created *before* or after the date of the disposition on trust for sale: L. P. A., 1925, ss. 2, 3. But the Acts further extend the principle in the following ways:— Trusts for sale.

(1) By giving to trustees for sale all the statutory powers of a tenant for life, thereby increasing the number of transactions which can be effected without looking behind the curtain.

(2) By increasing the number of cases in which trusts for sale will be implied.

(3) By permitting a special trust for sale to be created by an estate owner for the purpose of overreaching certain equitable interests created for money's worth affecting his estate. The special trust is not required where there is a subsisting trust for sale; there to overreach an interest created *before* the trust, either a trust corporation must act or the trustees or their predecessors must have been approved by the Court, save where the trust was implied by reason of the subsistence of undivided shares.

(4) By tightening the curtain, where the trust for sale is created by a will, by enabling the personal representatives to assent to the legal estate vesting in the trustees on trust for sale, thus removing the will from the sight of a purchaser.

(5) By providing that new trustees of the conveyance on trust for sale, and of the instrument whereby the trusts of the proceeds are declared, shall be appointed by separate instruments: T. A., 1925, s. 35. Not more than four trustees can be appointed: *ib.*, s. 34.

It is of the utmost importance to ascertain whether the land is settled or is held on trust for sale, for the method of making title is wholly distinct.

been created by a settlement made in his lifetime. If a settlement is created by the will or was subsisting before the death and has not determined, the assent will take the form of a vesting assent under the S. L. A., 1925, and will accordingly nominate S. L. A. trustees. In other cases it will be simply in favour of a named person or persons either absolutely, or as personal representatives, or on trust for sale. He may be entitled by devise or under an appropriation or otherwise, but, whatever the equitable title may be, a purchaser will close his eyes and rely on the assent.

The above is only a rough sketch of the principal curtain provisions, it does not pretend to be exhaustive, but is sufficient to indicate the underlying principles.

The Overreaching Provisions.

Overreaching provisions in relation to abstracts.

To return to the overreaching provisions; these are not only material to a purchaser, but must be borne in mind when an abstract is being prepared, for it will not be proper, subject to the exceptions relating to titles before 1926 and to freak settlements (see S. L. A., 1925, s. 110 (2), proviso), which, however, can be ignored if counsel's certificate has been given and the General Conditions of 1925 are employed, to include in the abstract an instrument relating only to interests and powers which will be overreached: L. P. A., 1925, s. 10. This s. alone is a sufficient justification for saying that abstracts in relation to matters occurring before 1926 will not be anything like as long, or relate to as many matters, as if the Acts had not come into force. A perusal of the abstracts set out in the 6th Sch. will show that this must be so.

Principle applicable to abstracts.

The general principle applicable to abstracts of title to legal estates is that they should correspond, as nearly as the subject-matter and the dealings with land permit, to what an abstract of title to stocks and shares would consist if no register were kept of transfers, probates and letters of administration, but trusts were kept off the title. Examples of abstracts are set out in L. P. A., 1925, 6th Sch.

Overreaching provisions not confined to displacing equitable interests.

It must not be understood that the overreaching provisions are exclusively confined to displace or shift equitable interests. For instance, legal mortgage terms belonging to subsequent mortgagees can and will be overreached when a prior mortgagee exercises his powers: L. P. A., 1925, ss. 88, 89, 104.

Also a tenant for life will overreach a legal term of years created, for family purposes, before the date of the settlement: S. L. A., 1925, ss. 1 (1) (v), 72; though in this case the term may by a vesting instrument be converted into an equitable term:

S. L. A., 1925, s. 9 (2); 2nd Sch., para. 1 (6). Equitable interests and powers are the matters mainly affected.

"Puisne" mortgages; new meaning.

A "puisne mortgage," though creating a legal estate, must be classed among equitable interests until it is registered as a land charge: L. C. A., 1925, s. 10 (1), Class C. (i). For, though when made before 1926 it may have been converted into a legal mortgage: L. P. A., 1925, 1st Sch., Pt. VII., para. 6; Pt. VIII., para. 5, it derives no protection therefrom till a land charge has been registered: *ib.* Where the mortgage is made after 1926, the position is the same: L. P. A., 1925, s. 97. Either the mortgagee must get the title deeds (s. 13) or the mortgage must be registered in a local deeds register or as a land charge. Puisne mortgages, including equitable mortgages, made after 1925, rank according to date of registration: s. 97. Mortgages of registered land will either be entered or protected on the register. The scheme for the registration of puisne mortgages constitutes a far-reaching reform making for practical safety.

Equitable interests created before 1926, to which a purchaser with notice takes subject.

The L. P. A., 1925, s. 2 (5) sets out the interests, created before 1926, to which a purchaser will only take subject if he has notice thereof and they are not otherwise overreached. Thus a restrictive covenant or an equitable easement, created before 1926, will be valid though not registered as a land charge.

Puisne mortgages and estate contracts made before 1926.

Puisne mortgages and estate contracts, made before 1926, are not required to be registered as land charges till they are transferred or assigned; though, as previously explained, it is expedient to register all puisne mortgages as land charges, as soon as possible.

Conveyances overreaching equities notwithstanding notice.

The conveyance will overreach the equities, notwithstanding that the purchaser has notice thereof:—

(1) If it can so operate under the S. L. A., 1925, the capital money being paid either to a trust corporation or to at least two trustees or into Court: L. P. A., 1925, s. 2 (1) (i).

Conveyances operating under the S. L. A.

The fact that all interests under compound settlements (S. L. A., 1925, s. 31) can be overreached is well known. The overreaching powers are not prejudiced by registration under the L. C. A., 1925: see s. 22 of that Act. The reason is that if the equity is shifted to the proceeds no further protection is required.

Conveyance by trustees for sale.

(2) If the conveyance is made by trustees for sale and the equitable interest or power is capable of being transferred to the proceeds of sale or the income till sale, provided the money is paid to a trust corporation or to at least two trustees: L. P. A., 1925, s. 2 (1) (ii). Purchasers are not concerned with trusts affecting the proceeds: *ib.*, s. 27. Trustees for sale have the

Act will, in regard to future bankruptcies, take the place of the onerous search for receiving orders.

Protection to purchasers, beyond that provided by Bkcy. A., 1914, s. 45, cannot be secured until the pending action is registered, the danger period between act of bankruptcy and the date of registration must remain, otherwise a loophole to commit frauds on creditors would be created.

Bankruptcy of tenant for life.

A tenant for life is a trustee of the legal estate in the settled land; if he is adjudicated bankrupt the land does not pass to the trustee in bankruptcy, only the equitable interest so passes: S. L. A., 1925, s. 103.

As to Equitable Interests and Assimilation.

Equitable interests may be created where before 1926 a similar interest could have been created.

After 1925 an equitable interest in land can, subject to the restrictions mentioned below, be created where an equivalent equitable interest could have been created before 1926: L. P. A., 1925, s. 4. As to the disposition of equitable interests: *ib.* See also ss. 51 (operation of conveyance), 52 (when a deed is required), 53 (writing required), 54 (parol), 55 (savings).

Entailed interests; disentailing assurances.

Equitable interests are further dealt with by the L. P. A., 1925, ss. 130 to 138; under s. 130 restrictions are placed on the mode of creation of entailed interests, but power is given to entail personal estate in the same way as in real estate; disentailing assurances, however (s. 133), need no longer be enrolled, for they operate only in equity.

Rule in *Shelley's Case*, heirs taking by purchase, executory limitations, extension of *Dearle* v. *Hall*.

The rule in *Shelley's Case* is abolished (s. 131), and the effect of a gift to heirs by purchase is defined (s. 132), the statutory restriction on executory limitations is made applicable to property generally (s. 134), and the rule in *Dearle* v. *Hall* is applied (s. 137) to realty settlements.

These reforms arose from the adoption of the principle that it was expedient, so far as practicable, to assimilate the law of real and personal estate.

Enforcement of Equitable Interests.

Enforcement of equitable interests and powers.

The provisions as to the enforcement of equitable interests or powers (as opposed to the protection thereof) are contained in s. 3 of the L. P. A., 1925, as respects trustees for sale and estate owners; in s. 16 of the S. L. A., 1925, as respects settled land, though the powers conferred by s. 16 (2) are also exerciseable by trustees for sale; and in s. 103 of the L. R. A., 1925, as respects registered land.

Priority of equitable interests,

As respects trustees for sale and estate owners, they are to give effect to the equitable interests and powers, whether created

before or after a disposition on trust for sale, of which they have notice according to their priorities. In this way claims which have priority to a trust for sale will nevertheless attach to the proceeds of sale. notice material.

In proper cases legal estates will be created in priority to the trust for sale. No conveyance will be made in undivided shares, but the tenants in common absolutely entitled may require the legal estate to be conveyed to not more than four of them on trust for sale: L. P. A., 1925, s. 3 (1) (b). Manner of giving legal effect to equitable interests.

Legal effect can be given to charges, rights of reverter and rights of entry: *ib.* s. 3 (2), (3).

Disputes will be submitted to the Court; vesting orders can be made by it: L. P. A., 1925, s. 3 (5).

As respects settled land, similar rules apply to equitable interests, whether created before or after the vesting instrument, thus these interests will attach to the capital money.

The question in each case will be whether or not a legal estate ought to be created so as to have priority to the settlement. For instance, a mortgage by a remainderman in fee does not come on the title till legal effect is given thereto by the special personal representatives of the deceased tenant for life. They must not give legal effect to it until the remainderman becomes absolutely entitled free from family charges and powers of charging. Such a mortgage is on the same footing as a mortgage by a tenant for life as soon as the remainderman comes within that category: S. L. A., 1925, s. 104. An assent should not be made expressly subject to an overreachable equitable interest. Mortgage by remainderman.

Provision is made for creating legal estates expressly subject to equitable interests unless postponed, *e.g.*, in default of available capital money, portions may have to be raised by mortgage subject to a subsisting jointure: S. L. A., 1925, s. 16. This, however, is not an expedient transaction, nor a security on which money could be readily obtained, for, if the jointure were subsisting when the mortgagee sold, the purchaser would become an estate owner subject to a family charge: S. L. A., 1925, ss. 1 and 20, and could only make title after a vesting instrument had been executed: *ib.*, s. 13. Thus the money should as a rule be raised under s. 71. Creation of legal estates subject to prior equitable interests undesirable.

In the case of registered land a legal estate may be registered to give effect to a minor interest; the principles applicable to unregistered land apply: L. R. A., 1925, s. 103. Registered land.

price or rent is not given or an interest in land is acquired, the like consent or order is required as on a sale: S. L. A., 1925, s. 29.

When a purchaser must investigate a settlement.

(9) In the so-called freak cases (*ib.*, s. 9) and where a settlement is made before 1926 or is expressed to be made in a way which is not authorised, then a purchaser, in default of a special condition (such as that in the General Conditions of 1925, providing for a certificate by counsel), will have to satisfy himself that the land was included in such settlement, that the vesting instrument conveyed the land to the proper person and that the proper trustees have been nominated: S. L. A., 1925, s. 110 (2), proviso.

Legal remedies of assignees from tenants for life.

(10) Certain legal remedies are conferred on assignees of tenants for life in order that there may be no unnecessary hindrance to dealings with life interests: S. L. A., 1925, s. 111; see also L. P. A., 1925, ss. 137-8.

Consent in lunacy to appointment of trustee.

(11) When a new trustee is appointed in place of a lunatic trustee who is also beneficially interested in possession (see L. P. A., 1925, s. 22) and the appointment is made by his co-trustee, the judge or master in lunacy must consent to the appointment: T. A., 1925, s. 36 (9).

Notice of appointment.

(12) Notice of an appointment of new trustees will be endorsed on a vesting instrument or a conveyance on trust for sale: T. A., 1925, s. 35.

All personal representatives to join.

(13) All personal representatives to whom representation has been granted must join in dispositions: Ad. of E. A., 1925, ss. 2 (2), 8; save where separate representation is granted in respect of a trust estate or settled land: ss. 13, 24; Jud. A., 1925, s. 155.

Notices of assents, &c.

(14) Notices of assents and conveyances by a personal representative will be endorsed on the probate or letters of administration: Ad. of E. A., 1925, s. 36.

Effect of assent or conveyance by personal representatives.

(15) Except in favour of a purchaser for money's worth, an assent or conveyance by a personal representative will not prejudice the rights of any other person: *ib.*, s. 36 (9); the right to follow the property is preserved: *ib.*, s. 38; the Court has power to order any transaction to be carried out for giving effect to the rights of the persons interested: *ib.* The proceedings can be registered as a pending action.

Equities.

(16) The powers of disposition of a personal representative do not affect the right of any person to require an assent or conveyance to be made: Ad. of E. A., 1925, s. 39 (2).

Beneficiaries let into possession before assent.

(17) Before assenting or conveying, a personal representative may let a beneficiary into possession without affecting his power

to convey: *ib.*, s. 43. The beneficiary may apply to the Court for an order for possession, the appointment of a receiver, for a conveyance, or to be registered as proprietor: *ib.*

Registered land.

(18) The methods of protection against the effect of registered dispositions are notices, cautions, inhibitions and restrictions to be entered on the register: L. R. A., 1925, ss. 48—62.

Conveyances of Legal Estates.

Conveyances not to be made subject to equitable interests.

Conveyances of legal estates, including assents in writing, a new form of assurance, should as a rule be confined strictly to dealings with legal estates, they should not be made subject to equitable interests; all mention thereof should as far as possible be kept off the title, save in the following cases:—

Cases where equitable interests may be mentioned.

(1) Where the equitable interest is one which is not overreachable, such as a restrictive covenant or an equitable easement protected by the registration of a land charge, there can then be no objection to conveying subject thereto.

(2) Where legal effect is to be given by the conveyance to an equitable interest capable of subsisting as a legal estate, reference will be made to the equitable interest.

(3) Where the estate owners (*e.g.*, tenants for life and trustees for sale) are to hold on the trusts of the trust instrument, or of the instrument declaring the trusts of the proceeds of sale, these instruments will be shortly referred to.

(4) Where the estate owners (*e.g.*, partners holding on trust for sale) have no right under their statutory powers to carry out a transaction, it may be necessary to have an Extension of Powers deed, in which the beneficiaries will concur, and to which reference must be made, but in view of the wide range of the statutory powers this will seldom occur. For instance, if S. L. A., 1925, s. 16 (2), is referred to, this would appear to authorise the trustees to raise money for the general purposes of the partnership. But independently of that sub-s., *semble*, the transaction could be carried out with safety under T. A., 1925, ss. 16 and 17.

(5) Where one of two or more trustees for sale is purchasing the land held on trust for sale, the sale must be carried out by the beneficiaries, who will direct the trustees to convey, unless an order of the Court is obtained.

(6) In cases within S. L. A., 1925, s. 16 (1) proviso, but only where the money cannot be raised under s. 71, or the Court refuses to help. *Semble*, if the money cannot be properly raised under s. 71 the transaction ought to be postponed.

(*i.e.*, owners of legal estates) the right to make title free from equitable interests. The greater part of the land in England and Wales is mortgaged, and it is inconceivable that the owners of such land should be relegated to the position of persons only entitled to equitable interests, involving all the old difficulties of making title. Their position under the Act enables them to deal with their equities of redemption as legal estates.

Effect of conveyance.

But though a mortgagee only takes a mortgage term, he is able and will on a sale convey the fee simple or, except in one case (s. 89 (6)), the head term vested in the mortgagor; the conveyance on sale will defeat any subsequent mortgage terms.

Foreclosure: Limitation Acts.

Similarly the mortgagee may acquire the fee simple or head term under the Limitation Acts by an enlargement or vesting deed (ss. 88 (3), 89 (3)) or by foreclosure: ss. 88 (2), 89 (2).

Any attempt by a mortgagee to take the fee simple or the head term as security is rendered useless, for the purported conveyance operates only to create a mortgage term: ss. 85 (2), 86 (2).

Right to possession of documents.

A first mortgagee, whether the mortgage is by demise or by legal charge has a right to the possession of documents: ss. 85 (1) and 86 (1), this assumes that the mortgagor is in a position to hand them over.

Satisfied terms.

The further difficulties arising from the employment of mortgage terms have been met by providing that a mortgage term shall, without prejudice to the rights of a limited owner, cease when the debt is paid off: s. 116.

The principle of the Satisfied Terms Act, 1845, now repealed and replaced with amendments, has been extended to cover terms derived out of leasehold interests: s. 5. While, for the purpose of paving the way to the getting in of effective legal estates, terms which under this principle have become satisfied, are made to cease: 1st Sch., Pt. II., para. 1.

Charges by way of legal mortgage.

Procedure has been further simplified by the power to create a new class of security, called a "charge by way of legal mortgage." Under such a charge the mortgagee is in the same position as if a mortgage term were vested in him: s. 87. No doubt this form of security is the one which will obtain general acceptance. It does not facilitate the creation of legal sub-mortgages, but no disadvantage thereby arises, a second or subsequent sub-mortgagee can register a land charge; it may sometimes be expedient to state when the legal right of redemption ceases, but this is a matter of drafting.

Tacking and further advances.

The right to tack is abolished save in regard to further advances: s. 94. The registration of a mortgage as a land charge or in a local deeds registry will not operate to postpone a further

advance, unless the registration was in force when the first advance was made, or when the last search was made, accordingly express notice must be given to the prior mortgagees: *ib.* Where there is an obligation to make further advances they may be made, with the same priority as the original advances, notwithstanding notice of the subsequent mortgage, thus overruling *West* v. *Williams*, 1899, 1 Ch. 132.

Priority of "puisne mortgages."

Legal mortgages, not protected by a deposit of documents, when made after 1925, will rank according to date of registration as land charges: s. 97, save in the case of registered land or land within the jurisdiction of a local deeds registry: *ib.*

Equitable mortgages.

Equitable mortgages made after 1925 and not protected by deposit of documents are also within the s. These, whether or not the land is in Middlesex or Yorks, should be registered as land charges, for the jurisdiction of the local deeds registries does not extend to equitable interests: *ib.*, s. 11.

Priority in Middlesex and Yorks.

Independently of notice, mortgages in Middlesex rank according to date of registration: *Neve* v. *Pennell*, 1863, 2 H. & M. 170; and a registered mortgage prevails over an unregistered mortgage: *Re Wight*, 1873, L. R. 16 Eq. 41.

Puisne mortgages made before 1926.

Under the Yorkshire Registries Act, 1884, s. 14, a mortgage ranks according to date of registration. These puisne mortgages, even when made before the Act, should be registered as land charges, otherwise a purchaser without notice will not be affected: 1st Sch., Pt. VII., para. 6; Pt. VIII., para. 5; L. C. A., 1925, s. 10 (1), Class C. (i), (7). This important reform has been rendered all the more necessary because there can now be a succession of legal mortgages affecting freeholds, just as there can be a succession of legal mortgages affecting leaseholds. At the same time the reform is in itself valuable, for it places second and subsequent mortgages on a secure footing.

Trusts affecting mortgage debts.

Persons dealing with the land will no longer be concerned with trusts affecting a mortgage debt, notwithstanding notice: s. 113. It was the practice to keep these trusts off the title to the mortgaged land, but it was not always possible to do this.

Forms.

Short forms of transfers and reconveyances, by endorsed receipts, not necessarily under seal, are prescribed by ss. 114—115. The provisions as to transfers of mortgages incidentally meet the decision in *Re Beachey*, 1904, 1 Ch. 67. For a form of a charge by way of legal mortgage, see 5th Sch., Form No. 1.

Rentcharges and Powers of Attorney.

The creation of a rentcharge out

Sections 121 to 129 of the L. P. A., 1925, relate to rentcharges and powers of attorney. After 1925 it will be possible to create

of another rentcharge.

a rentcharge out of another rentcharge, and to appoint a receiver if payment is not punctually made.

As to the redemption and apportionment of rentcharges, see ss. 190 to 192.

Devolution of powers of attorney given for value.

Powers of attorney may be given to a purchaser and the persons deriving title under him instead of to him and his substitutes. Such a power will be given in a mortgage of part of the land comprised in a lease where the rent is not legally apportioned, to enable the mortgagee to convey or acquire the head term.

Purchaser's right to power of attorney.

A purchaser is entitled to have either the original or an office copy of a power of attorney under which title to the land is made: s. 125.

Leases.

Relief of lessee from liability to effect internal decorative repairs.

Sections 139—154 of the L. P. A., 1925, relate to leases and tenancies. By s. 147 power is given to the Court to give relief to a lessee, in proper cases, where notice has been given requiring him to effect internal decorative repairs. By means of such notices pressure, of an undesirable nature, has been brought to bear on lessees to force them to purchase their houses.

Abolition of *interesse termini*.

Terms of years, whether taking effect in possession or on a future date, will, as from the date fixed for the commencement of the term, take effect without actual entry: s. 149.

Restriction on creation of terms to take effect *in futuro*.

Terms at a rent or granted in consideration of a fine will be void unless they take effect within 21 years from the date of the demise: s. 149 (3). Similarly, contracts to create a term to commence at a later date are void.

This restriction on the creation of future interests is required to prevent legal interests being created of such a nature as would seriously depreciate the value of the land and clog the title. The prohibited interests are nearly as objectionable as perpetually renewable leases, which have been abolished.

Powers, Perpetuities and Accumulations.

Fraud on powers.

Sections 155—160 of the L. P. A., 1925, relate to powers; some protection is given to purchasers who claim under an appointment void as a fraud on the power; the protection will not render it unnecessary to take the same precautions as have hitherto been adopted.

Abolition of the double possibility rule.

Sections 161—163 relate to perpetuities; only the general perpetuity rule is allowed to remain, the double possibility rule which only applied to land has been abolished: s. 161. Gifts which would be rendered void because an age exceeding 21 years

has been fixed for vesting, take effect as if the age of 21 years had been adopted: s. 163.

Sections 164—166 relate to the restrictions on accumulations of income. Some doubts on practice points have been removed. Restrictions on accumulations of income.

Sections 167—170 relate to married women; dispositions by them will in no case have to be made by deed acknowledged. Acknowledgments by married women.

It will already have been observed that as powers (s. 1 (7)) only operate in equity, subject to the special exceptions in ss. 7—9, the basis of public conveyancing has been shifted from powers to estates, for a purchaser will insist (s. 42) on obtaining a legal estate. Basis of conveyancing shifted to estates.

Lunatics, Voidable Dispositions and Wills.

By s. 171 the Court (in lunacy) is given power to direct settlements to be made of a lunatic's property; by this means it is possible to remove any injustice which might arise because of the change in the law of intestacy. It will have been noticed that all conveyances of a legal estate of a lunatic will be made in his name: s. 22. Settlements of lunatic's property.

Sections 172—174 relate to voidable dispositions and acquisitions of reversions; and ss. 175—179 to wills. When the enactments relating to wills are consolidated, a better place can be found for these ss., all of which introduce minor novelties; in particular, s. 176 authorises a tenant in tail in possession to dispose of entailed property by will without having previously barred the entail; and under s. 177 a will made in contemplation of a marriage will not be invalidated by that marriage. It should, however, be made conditional on the solemnisation thereof. Voidable dispositions and wills.

It will be noted in passing that wills operate in equity; the legal estate of a testator will pass to his personal representatives, who will, in writing, assent to it passing to the person entitled: Ad. of E. A., 1925, s. 36; S. L. A., 1925, ss. 6—8. Accordingly abstracts of title to legal estates should only state the probate and the effect of the assent. Wills operate in equity.

Miscellaneous Matters in L. P. A., 1925.

Of the ss. (180—200) relating to miscellaneous matters, those of sufficient importance to note in a general survey are:—

(a) Section 180, relating to the devolution of property of corporations sole, and to dealings when there is a vacancy in the office. Corporations sole.

(b) Section 190, giving the remedies for non-payment of rent or breach of covenant, usually incorporated in conveyances subject to rents not legally apportioned. Unapportioned rents.

Redemption of rents.

(c) Section 191, giving power to apportion and redeem rents, other than rents reserved by a lease. This will enable many titles in the North of England and in the Bristol district to be cleared of overriding rentcharges, which have become an intolerable nuisance.

Judgment debts.

(d) Section 195, consolidating the law relating to equitable charges in right of judgment debts. See also s. 90 relating to the realisation of equitable charges by the Court. Writs of *elegit*, now seldom employed, are not expressly dealt with in this section; they must still be registered under the L. C. A., 1925.

Deeds registries.

(e) Section 197, providing that registration of a memorial in a local deeds register of an instrument creating or transferring a legal estate is to operate as notice, but without prejudice to the priority of further advances in accordance with s. 94. In future only memorials of instruments creating, or transferring, or evidencing the devolution of legal estates will be registered at a local deeds registry: s. 11. These include probates and letters of administration.

This, provision, relating to notice, has an important bearing on puisne mortgages. A purchaser of land within the jurisdiction of the Middlesex or Yorkshire registers cannot be advised to neglect to obtain the usual certificate of search.

Registration under Land Charges Act.

(f) Section 198 similarly makes registration under the L. C. A., 1925, operate as notice of a puisne mortgage or equitable interest, in respect of which a pending action, writ, order, deed of arrangement or land charge is registered, but without prejudice to the provisions (s. 94) as to further advances. This is of great importance in connexion with the protection of puisne mortgages and equitable interests. A purchaser of a legal estate will always be advised to obtain the usual certificates of search.

Restrictions on notice.

(g) Section 199, consolidating the enactments imposing restrictions on notice, provides that a purchaser shall not be prejudicially affected by notice of any instrument or matter capable of registration under the L. C. A., 1925, which under that Act is void or unenforceable against him by reason of non-registration. Thus the s. in effect imposes an obligation, notwithstanding notice, to register under the L. C. A. a claim capable of being so protected.

The marginal note is misleading; it speaks only of constructive notice.

"Hereditaments."

Of the general provisions (ss. 201—209) a note may be made that though the Act applies (s. 201) to incorporeal "hereditaments," an expression which will become obsolete (defined in s. 205 (1) (ix) so as to exclude a personal inheritance) the statutory restrictions on dealings with advowsons are unaffected: s. 201.

Definitions.

The definitions in s. 205 of "conveyance," "estate owner," "land" "legal estates," "purchaser," "term of years absolute," and "trust corporation," are worth a careful perusal, as is also sub-s. 3 showing the construction to be placed on references to registration under the L. C. A., 1925.

Settled Land Act, 1925 (*Summary*).

As this Act with the notes thereon is to be printed in vol. ii., it seems expedient to give a brief summary of the main innovations thereby introduced.

Vesting instruments to be executed after 1st Jan. 1926.

(1) The first point to remember, when the Act comes into force in 1926, is that a vesting instrument (see Form No. 1, 1st Sch.), must be executed (2nd Sch., para. 1) to give effect to each existing settlement, whether made by deed or will. Until this is done no legal disposition *inter vivos* can be made of the land, save by a personal representative in whom it is vested: s. 13. There is one exception—a purchaser without notice of a settlement can acquire a legal estate from the estate owner. If the settlement is wholly spent before a vesting deed is executed, and under the vesting provisions or otherwise the legal estate is already placed in the proper person, it may be possible to dispense with such a deed.

Position of a purchaser who has acquired land subject to family charges.

A purchaser who has acquired land before 1926, subject to family charges or powers of charging, is placed in the position of a tenant for life: s. 20 (1) (ix); the land is settled land: ss. 2 and 3; and unless the Courts hold that the settlement creating the charges or powers with the conveyance do not constitute a compound settlement: ss. 1 (1) (v), 3, 31, 33, 117 (1) (xxiv), he must either obtain a release or the execution of a vesting instrument by S. L. A. trustees (ss. 33 and 31) before he can make title: *ib.*, s. 13, 2nd Sch., para. 1; for a purchaser from him will insist on acquiring the legal estate: L. P. A., 1925, s. 42. There does not seem to be any doubt that a purchaser after 1925 subject to family charges would have to make title under the S. L. A.; or if the purchase was made before 1926 and the purchaser resettled, that there would then be a compound settlement.

Vesting instrument to be executed by S. L. A. trustees.

There must be S. L. A. trustees to execute the vesting instrument, if there are none they must be appointed, but having regard to ss. 30 to 33 (see also 2nd Sch., para. 3 (3)), it will seldom happen that there are no trustees. If there is a compound settlement the trustees thereof must execute the vesting deed.

Still less frequently, having regard also to the Ad. of E. A., 1925, s. 42 (power to appoint trustees during a minority), will it be necessary to apply to the Court, under s. 34 of the S. L. A., for the appointment of trustees.

Vesting does not take the place of vesting instrument.

It is true that the legal estate in the settled land will, unless there has been a death or change of ownership between the commencement of the L. P. A., 1925, and the date of the vesting instrument, have been vested (L. P. A., 1925, 1st Sch., Pt. II.) in the tenant for life of full age or "statutory owner" (see s. 117 (1) (xxvi), *e.g.*, the trustees during a minority); this, however, does not render unnecessary the execution of a vesting instrument to state the person in whom the land is vested.

When equities investigated.

A purchaser, unless precluded by condition (see the General Conditions of 1925), will still, in the cases within s. 110 (2) which include a vesting instrument made for giving effect to a settlement subsisting at the commencement of the Act, trace the title to the land and see whether it is expressed to be vested in the proper person and that the trustees named are the S. L. A. trustees; but, subject to these exceptions, the vesting instrument operates to keep the equitable interests off the title: s. 110. The two other transitional provisions in the 2nd Sch. are also of importance relating respectively to cases where at the commencement of the Act the land is vested in personal representatives or there is a minority.

Distinction introduced between public and private conveyancing.

(2) For many years a trust for sale has been employed to keep beneficial interests off the title to land, and to a limited extent the same principle was employed in the S. L. A., 1882, for under that Act title had only to be traced to the existing tenant for life.

Settlements after 1925.

In the case of future settlements, the beneficial interests thereunder are treated as family matters, the legal estate being the only matter which concerns the public, *i.e.*, purchasers, mortgagees and lessees of the land itself, not of equitable interests under the settlement. Accordingly all settlements of land will in future consist of two instruments, *i.e.*, the trust instrument, which will show the beneficial interests, and the vesting instrument, which will show in whom the legal estate is vested, and the trustees to whom all capital money is to be paid: ss. 4—10, 18, 72 and 110.

Subject to the exceptions mentioned in s. 110, a purchaser

will only be concerned with the vesting instrument; for forms of these instruments see 1st Sch.

(3) It is important to remember that the general provisions of the Act relate to the making of title to legal estates; a person entitled to an interest in remainder obviously cannot be a tenant for life within the Act. The legal estate, the subject of the settlement (see ss. 1 (3), (4), (5), 2, 117 (1) (ix)), is to be vested in the tenant for life (ss. 19—21) or statutory owners (ss. 23, 26, 117 (1) (xxvi)) as the trustee or trustees of the land: ss. 4—10 and 2nd Sch. Title to the legal estate.

(4) The Act does not (save as respects s. 36, relating to undivided shares) apply where the land either expressly or by implication is held on an immediate trust for sale, for in that case the trustees for sale have the powers. Act does not apply in the case of trusts for sale.

Trusts for sale arise where:—

(a) the land is held in undivided shares in possession: s. 36; L. P. A., 1925, ss. 34 and 38, 1st Sch., Pts. IV.—VI.

(b) an infant and a person of full age are jointly and beneficially entitled to a legal estate at the same time: s. 26, 2nd Sch., para. 3 (5) (6); L. P. A., 1925, s. 19, 1st Sch., Pt. III.

(c) land passes under an intestacy: Ad. of E. A., 1925, s. 33.

(5) The class of persons having the powers of a tenant for life is extended to include— Persons having the powers of a tenant for life.

(a) an absolute owner subject to charges or powers of charging under a settlement: s. 20 (1) (ix).

(b) a married woman entitled to a legal estate subject to a restraint on anticipation: s. 20 (1) (x).

(c) an absolute owner subject to equitable interests or powers created for money's worth: s. 21; provided that he complies with the requirements of that section.

(d) where there is no tenant for life, for instance, where there is a discretionary trust, or there is a minority, or there is a tenant in tail under a settlement of land purchased with money provided by Parliament who cannot bar the entail then under ss. 23 and 26—

Either the person of full age on whom the powers are expressly conferred by the settlement; or,

In default of such person, the trustees of the settlement can exercise the powers.

As the tenant for life now becomes a trustee of the land, a married woman is able to exercise the powers without her husband: s. 25. A dowress is not a tenant for life unless her dower has Married women and widows.

been assigned to her by metes and bounds, when she is an ordinary tenant for life in regard to the land assigned. Dower has been abolished where the husband dies after 1925: Ad. of E. A., 1925, s. 45.

Infants. An infant is no longer a tenant for life, but during his minority the powers will be exercised either by the personal representatives in whom the land may be vested or by the S. L. A. trustees: s. 26.

Where an infant and a person of full age are jointly entitled for life, then, during the minority, the person of full age is the tenant for life: s. 19 (3).

Lunatics. The committee or receiver of a lunatic tenant for life will exercise the powers in his name and on his behalf: s. 28.

Charity trustees. The managing trustees of charity land, save where the University and College Estates Act, 1925, applies, are given the statutory powers by s. 29, but subject to the requisite order or consent being obtained as provided in that section.

Seeing that trustees for sale (L. P. A., 1925, s. 28) and personal representatives (Ad. of E. A., 1925, s. 39) are also given the statutory powers of a tenant for life, it seems that there must in almost every case be a person who will be able to make title to land, and to carry out any reasonable transaction.

Events in which trustees become S. L. A. trustees extended. (6) The events in which trustees will become trustees for the purposes of the Act have been extended—

(a) By s. 30 (3), so as, in default of the other qualifications mentioned in that s., to include personal representatives under a will or an intestacy.

(b) By the 2nd Sch., para. 3 (3), so as to include persons who have been appointed by the Court under s. 60 of the S. L. A., 1882, to act on behalf of an infant.

Additional powers to appoint trustees. In addition to the powers (T. A., 1925, ss. 36, 64) to appoint new trustees and for the Court to appoint under S. L. A., 1925, s. 34, additional powers to appoint trustees out of Court are conferred—

(a) By 2nd Sch., para. 3 (1) (iv), on the parents or guardian of an infant who at the commencement of the Act was beneficially entitled to a legal estate, or would, if of full age, have had the powers of a tenant for life.

(b) By s. 42 of the Ad. of E. A., 1925, on personal representatives holding any property in trust for an infant.

(c) By the L. P. A., 1925, 1st Sch., Pt. III., para. 3 (i), on the parents or guardian of an infant who, at the commencement of the Act, held a legal estate in a fiduciary capacity or as mortgagee. The infant might have been a S. L. A. trustee.

The provisions of ss. 31—33, relating to trustees of compound settlements, of settlements by reference and to the continuance in office of trustees, will further reduce the number of applications to the Court for the appointment of trustees, which would otherwise have been requisite. Trustees of compound settlements.

Where no capital money arises, a transaction may be carried out though there may then be no S. L. A. trustees: s. 110 (4).

As references to a "settlement" mean the compound settlement, if there is one: s. 1 (1) (v), it follows that the trustees who are referred to in the Act will be those of the compound settlement. This is in accordance with the principle that the best title must always be given: L. P. A., 1925, s. 42. See also S. L. A., 1925, s. 31, under which the trustees of settlement No. 1 will be the trustees of the compound settlement consisting of that settlement and those instruments subsequent in date or operation. Title to be made under compound settlements.

It will not be necessary to appoint expressly trustees for the purpose of managing land during a minority or pending a contingency; the S. L. A. trustees will be able to act: s. 102. Management.

(7) The statutory powers (s. 38, *et seq.*) conferred on a tenant for life (this includes s. 117 (1) (xxviii), a person having the powers not being a statutory owner) or statutory owner have been extended to include all transactions which could be reasonably expected to be authorised, but the unexpected frequently happens, hence a general power to carry out any transaction relating to land with the leave of the Court is conferred by s. 64. General power for tenant for life to carry out any reasonable transaction.

As the tenant for life will be the trustee of the settled land, it will on his death pass to his personal representatives, who in this case will be the S. L. A. trustees: Ad. of E. A., 1925, s. 10 (now replaced by the Jud. A., 1925, s. 162), and ss. 22—24; they will, by a vesting assent, transfer the land to his successor: S. L. A., 1925, ss. 7 and 8. Devolution of settled land.

Trustee Act, 1925.

As this Act will be printed in Vol. II. attention should be called to the following conveyancing points.

(1) Power is given by s. 10 (2) to a tenant for life on the sale of a fee simple, or of a term having at least 500 years to run to arrange for not more than two-thirds of the purchase-money to be left on mortgage. Power to leave part of the purchase money on mortgage.

(2) The powers incidental to a trust or power to sell (s. 12) now apply whenever the trust was created: s. 69. They include a power to dispose of part of land however the division is made: Powers incidental to trust or power to sell.

sub-s. (2). This does not authorise the creation of undivided shares. Under S. L. A., 1925, s. 50, trustees for sale have power to deal with surface and minerals separately: L. P. A., 1925, s. 28.

A power (as opposed to a trust) to sell land is useless save for the purpose of constituting S. L. A. trustees: S. L. A., 1925, s. 30, or of enlarging the powers of a tenant for life: *ib.*, ss. 108, 109.

Power to give receipts.

(3) The power to give receipts (s. 14) does not enable a sole trustee, not being a trust corporation, to give a valid receipt for money arising under a trust for sale or for capital money arising under the S. L. A., 1925.

Powers of representative of sole trustee.

(4) The personal representatives of a sole or surviving trustee will be able to act in trusts (s. 18) whenever created: s. 69. As copyholds are abolished an heir of a trustee will in no case succeed to a trusteeship.

Delegation of powers.

(5) A trustee, including a tenant for life, is given power to delegate during absence abroad: s. 25.

Number of trustees of land.

(6) Four is the limit imposed in the case of trustees of settlements of land (*i.e.*, S. L. A. trustees: s. 68 (15), where the expression "trustees of the settlement" is defined), or holding land on trust for sale: s. 34. This restriction was imposed to prevent land, whether settled or subject to a trust for sale, from becoming unsaleable by reason of the employment of an excessive number of trustees. If more than four trustees have been appointed before 1926 they may continue to act.

Instruments appointing trustees.

(7) Trustees of dispositions on trust for sale and of the settlement of the proceeds of sale will be appointed by separate instruments: s. 35. Memoranda of the appointment of new trustees will be endorsed on vesting instruments affecting settled land and on dispositions on trust for sale: *ib.*

Implied vesting declarations.

(8) Vesting declarations are implied in proper cases: s. 40.

Power for Court to authorise transactions.

(9) In addition to the power given by s. 64 of the S. L. A., 1925, the Court is given power generally to authorise transactions in relation to trust property: s. 57. This will remove many doubts in regard to jurisdiction.

Appointments of S. L. A. trustees.

(10) Where the Court has appointed S. L. A. trustees, then the person having power to appoint new trustees of the settlement may appoint new trustees when a vacancy occurs among the trustees appointed by the Court: s. 64.

The Land Charges Act, 1925 (*Summary*).

Main purposes served by the L. C. A., 1925.

The Land Charges Act, 1925, serves two main purposes. First, it operates to protect (by means of notice, L. P. A., 1925, s. 198)

certain registered interests from being overreached in favour of a purchaser of a legal estate, and secondly it makes it clear that certain interests will be unenforceable against a purchaser unless they are protected by registration.

The following is a summary of its new provisions:—

Pending actions.

(1) A "pending action," as defined in s. 2, is given a wider scope in order to carry out the above purposes. In particular it includes a petition in bankruptcy. The object is to enable a purchaser to obtain an official certificate of search (s. 17) in regard to bankruptcy. As regards a legal estate, the petition does not, unless registered as a pending action, give notice to a purchaser for money's worth (without extraneous notice of an act of bankruptcy) of the bankruptcy, unless registered as a pending action: s. 3 (1) (2). The title of the trustee in bankruptcy is postponed to that of a purchaser for money's worth claiming under a conveyance made after the registration of the pending action, unless the pending action is still registered or the receiving order is registered under s. 6. See also a similar provision as to receiving orders: s. 7.

The only hiatus left, is the period between the act of bankruptcy and the registration of the pending action. This, however, is not a serious matter, for the filing of the petition no longer operates as notice, and under the Bkcy. A., 1914, s. 45, the title of a purchaser for value without notice, before the receiving order is made, is protected.

Annuities.

(2) The annuity register, when the annuities have ceased, is to be closed under s. 4, for in future annuities can be registered as land charges. Annuities not so registered are void as against a creditor or purchaser: s. 5.

Writs and orders affecting land.

(3) As explained above, a receiving order is now to be treated, whether or not it is known to affect land, as an order which must be registered: ss. 6—7. See also L. P. A., 1925, s. 195.

Deeds of arrangement.

(4) In future, deeds of arrangement must, like pending actions, writs and orders, be re-registered every five years, otherwise the registration will be spent, and they will not affect a purchaser: ss. 8—9.

Land charges.

(5) The most extensive alterations occur in reference to land charges: ss. 10—14. They are now divided into classes. Those within Class A. were, with an insignificant exception in regard to orders formerly made by Courts leet, land charges under the Act of 1888. Class B. includes charges created "otherwise than pursuant to the application of any person," thus rectifying the defect disclosed in *Reg.* v. *Land Registry*, 1890, 24 Q. B. D. 178.

Class C. includes:—

"Puisne mortgage."

(i) A "puisne mortgage," *i.e.*, a legal mortgage not registered in a local deeds register and not protected by a deposit of documents relating to the legal estate.

"Limited owner's charge."

(ii) A "limited owner's charge," *i.e.*, acquired by a tenant for life paying off a statutory charge (*e.g.*, for estate duty) out of his own money.

"General equitable charge."

(iii) A "general equitable charge," *i.e.*, a charge not protected by the deposit of documents relating to the legal estate and not arising under a trust for sale or a settlement.

The reasons for these exceptions are, first, that a deposit of documents gives a sufficient security: L. P. A., 1925, s. 13.

Secondly, that where the charge relates to an interest in proceeds of sale or under a settlement, it is already sufficiently protected by the fact that all capital money arising must be paid either to a trust corporation or to at least two individuals.

"Estate contract."

(iv) An "estate contract," *i.e.*, a contract to convey or create a legal estate. This also applies to a contract to settle a legal estate: S. L. A., 1925, s. 11; see also L. P. A., 1925, s. 200 (4).

Class D. includes:—

Inland Revenue charge.

(i) An Inland Revenue charge, *i.e.*, for duties on a death after the Act.

"Restrictive covenants."

(ii) A "restrictive covenant" respecting land entered into after 1925. Thus it will not be sufficient merely to give notice of a restrictive covenant, but a purchaser will take free from it unless a land charge is registered. To avoid the restriction being thus made permanent, it can be modified or discharged under L. P. A., 1925, s. 84; see also L. P. A., 1922, s. 137 (2), as to restrictions for the protection of Royal Parks. Covenants between lessor and lessee are not affected: L. P. A., 1925, s. 6.

"Equitable easements."

(iii) "Equitable easements," *i.e.*, an easement created for an interest less than a fee simple or a term of years absolute, after the commencement of the Act, such as a personal licence, or an easement created after the Act by a person who only has an equitable interest or power.

Annuities created before 1926.

Class E. consists of annuities created before the Act which the annuitant has failed to register in the existing annuities register. These will be void against a purchaser unless registered in one of the registers: s. 5. They only refer to a very small class of annuities defined in s. 4 (5).

Registration under the Companies Act.

Registration of a land charge created by a company for securing money, if registered under the Companies Act, 1908, s. 93, has effect as if registered as a land charge under this Act, thus avoiding double registration: s. 10 (5).

Yorkshire.

A general equitable charge, restrictive covenant, equitable easement or estate contract may be registered in the appropriate Yorkshire deeds register instead of at the Land Registry: s. 10 (6).

Puisne mortgage made before 1926.

A puisne mortgage, though created before the Act, may, even before transfer (s. 14 (2)), be registered as a land charge: s. 10 (7). This will enable the mortgagee to secure the benefit of his mortgage being converted into a legal mortgage: L. P. A., 1925, 1st Sch., Pt. VII., para. 6, Pt. VIII., para. 5.

Land charges taking effect as mortgages.

Land charges of Classes A. or B., if made for securing money, will take effect as charges by way of legal mortgage: s. 11. This is to facilitate realisation when the charges are not kept down.

Overreaching or defeating provisions.

The overreaching provisions (ss. 3, 5, 7, 9, 13, 14) operate by making the charge, &c., void as against a purchaser, unless it is registered at the time when the transaction (see definition of "purchase" in s. 20 (8)) for value is completed. Registration operates as notice: L. P. A., 1925, s. 198; with a special exception to enable further charges to be made with safety: *ib.*, s. 94. Other statutory powers to overreach (see *e.g.*, L. P. A., 1925, ss. 2, 28; S. L. A., 1925, ss. 21 and 72) are not affected, even if the charge, &c., is registered, unless the statute otherwise provides: s. 22.

As to registration of land charges created before 1926.

One year from the time of conveyance of the benefit of a land charge, Class A., created before 1889, and the same period for a land charge, Class B. or C., created before 1926, is allowed for registration: s. 14. As to Class E., see s. 5. No obligation is imposed to register an Inland Revenue charge, restrictive covenant or equitable easement (Class D.) created before 1926, whether or not the benefit of it is transferred after that date.

Local land charges.

Local land charges (see definition in s. 15 (1) (7)) are placed on the same footing as land charges of Class B.: s. 15 (2); save that instead of registration with the Land Registrar, the registration will be effected with the local authority, who will grant certificates of search: s. 15 (6). This is a great advance on the old practice, but it is unfortunate that certificates of search will have to be obtained (s. 17) from the local authority as well as from the Land Registrar.

Registered land.

Save as regards local land charges, pending actions, writs, orders, deeds of arrangement and land charges will, as respects registered land, be protected by entries made under the L. R. A.,

1925, instead of by registration under the L. C. A., 1925: see s. 23.

Searches. As to what official certificates of search should be obtained by a purchaser, see the last chapter of this volume.

Administration of Estates Act, 1925 (*Summary*).

As this Act will be printed and noted in Vol. II. the following short summary is given in relation to matters affecting conveyancing practice.

Property passing to personal representative. (1) All real estate (defined in s. 3 (1)) held for an interest not ceasing on the death, whether beneficially or on trust or by way of mortgage, passes on death to the personal representative: s. 1. Also real estate appointed under a general power or under the power to dispose of entailed interests conferred by L. P. A., 1925, s. 176. Trust estates include settled land: s. 3 (1) (ii).

Number of personal representatives who can act. Though a surviving or sole personal representative can under s. 2 convey real estate, still under s. 12, now replaced by the Jud. A., 1925, s. 160, during a minority or the subsistence of a life interest, representation will be granted either to a trust corporation or to not less than two individuals. All the representatives to whom representation of the real estate is granted must concur: s. 2 (2); save where separate representation is granted for the purposes of a trust estate or settled land: Jud. A., 1925, s. 155; Ad. of E. A., 1925, ss. 13, 22, 24.

Proving executors to make title. The executors who prove are the persons to make title: s. 8.

Application to settled land. Where the land is settled, otherwise than by the testator's will, letters of administration (Jud. A., 1925, s. 162, replacing s. 10 of the Ad. of E. A., 1925) or probate (Ad. of E. A., 1925, s. 22) will be granted to the S. L. A. trustees. If representation to the settled land has been granted to any other person, this can afterwards be rectified, if necessary, under s. 23.

Trust corporations. Representation will be granted directly to trust corporations, and not through the intervention of syndics: Jud. A., 1925, s. 161, replacing the Ad. of E. A., 1925, s. 14.

Legal estates outstanding in syndics. Legal estates outstanding in syndics are vested in the trust corporation by the Act: *ib.*

Protection of purchasers dealing with personal representatives. Persons dealing in good faith with personal representatives *de facto* are protected, notwithstanding subsequent revocation: ss. 27 and 37.

Administration of assets. (2) The enactments relating to administration of assets are set out in ss. 32—44 and in the 1st Sch.

An intestate's estate is held on trust for sale with power to postpone the sale and to invest the net proceeds in investments authorised by statute: s. 33. The income of the estate, however

invested, is from the death applicable as income: s. 33 (5). But this does not negative the rule in *Allhusen* v. *Whittell*, 1867, L. R. 4 Eq. 295; 36 L. J. Ch. 929.

Order of payment of debts.

The order for payment of debts where the estate is insolvent is prescribed in Pt. I. of the 1st Sch.; while if the estate is solvent, the order is prescribed by Pt. II. Death duties are unaffected: s. 53 (3).

Real Estate Charges Acts extended.

The principle of the Real Estate Charges Acts is extended to property generally (s. 35); those Acts are repealed, being, with this alteration, reproduced by that s.

Assents.

The law as to assents to property passing is laid down in s. 36. A legal estate will not pass without an assent in writing in favour of a named person: s. 36 (4). Doubtless the practice of making assents in writing will be applied to other interests. After 1925 the power to make assents or to convey applies whether the testator or intestate dies before or after 1926: *ib.*, sub-s. (12).

Remission of stamp duty.

No stamp duty is payable in respect of an assent (s. 36 (11)) which will relate back to the death: sub-s. (2).

Notice of assents to be endorsed.

Notices of assents will be endorsed on the probate or letters of administration: sub-s. (5).

Protection of purchasers.

Statements by a personal representative that he has not previously conveyed or assented, will protect a purchaser for money's worth (sub-s. (11)) of a legal estate unless notice of a previous conveyance or agreement has been endorsed: sub-s. (6).

The person for whose benefit an assent or conveyance is given will, in favour of a purchaser for money's worth, be deemed to be the proper person in whom the legal estate ought to be vested, unless a previous endorsement shows that the legal estate has been dealt with: sub-s. (7); see *Wise* v. *Whitburn*, 1924, 1 Ch. 460.

Curtain provisions.

Thus the practice prescribed by s. 36 is in aid of ss. 8 and 110 of the S. L. A., 1925, and forms a material part of the scheme for erecting a curtain between the legal estate and equitable interests.

For whose benefit assents may be given.

It will be noted that assents will be made in favour of tenants for life of full age, statutory owners, trustees for sale, personal representatives of a deceased devisee or legatee, and persons claiming under an intestacy as well as under a will or under (s. 41) an appropriation: s. 36 (1), (12). The s. applies to conveyances (see definition s. 55 (1) (iii)) as well as to assents, but, save where a legal estate is conveyed to a purchaser, a disposition by personal representatives will usually take the form of an assent in order to avoid stamp duty. If the land is subject to a trust for sale, the assent must direct it to be held on trust for sale; it must not refer to the instrument creating the trust for this purpose.

Forms of assents.

For forms of assent, see L. P. A., 1925, 5th Sch., Forms Nos. 8 and 9, and S. L. A., 1925, 1st Sch., Form No. 5 (a vesting assent).

Purchaser not affected by notice of payment of debts.

Notice of payment of debts, &c., will not prevent title being made to a purchaser for money's worth: sub-s. (8). This is unobjectionable; the personal representatives may be acting during a minority or the subsistence of a life interest in the proceeds of sale: s. 39; S. L. A., 1925, s. 110 (3).

Death duties.

The existence of liabilities, including death duties, will be no reason for postponing an assent if reasonable arrangements are made for their discharge: s. 36 (10); see also S. L. A., 1925, s. 8 (3), (6).

Powers of Court.

The Court may order sales or other transactions to be carried out to give effect to the rights of the persons interested, although an assent or conveyance may have been made in favour of any person, not being a purchaser: s. 38. This s. takes the place of the enactments relating to title being made by devisees or trustees which have become obsolete, for the real estate vests in the personal representatives without any exception now that copyholds have been enfranchised.

Powers of personal representives.

It will be remembered that trustees holding on trust for sale have (L. P. A., 1925, s. 28) been given the powers of a tenant for life and of the trustees of a settlement. Now by s. 39 the personal representatives are, until the period of distribution arrives, given, in reference to the real and personal estate—

(a) the old powers of a personal representative in regard to personal estate, including power to raise money for purposes of administration by deposit of documents or by charge by way of legal mortgage: sub-s. (1) (i);

(b) the powers of a trustee for sale, including (L. P. A., 1925, ss. 2, 27, 35, 1st Sch., Pt. IV.; S. L. A., 1925, s. 72) power to overreach equitable interests: sub-s. (1) (ii) and (iii).

A purchaser will not be concerned to see whether there is a minority or a subsisting life interest, or whether or not the period of distribution has arrived: S. L. A., 1925, s. 110 (3).

Thus the old theory that a personal representative represented the person of the testator or intestate and could do what he could have done if living, is, for all practical purposes, restored. This is rendered possible by the safeguards created for the protection of beneficial interests.

Under s. 40 effect can be given to an annuity by creating a rentcharge, and provision can be made for securing principal sums charged on land by means of a term.

The wide power of appropriation conferred by s. 41, when exercised, will be valid in favour of a purchaser (sub-s. (8)) for money's worth, who will not be concerned to see whether the requisite (sub-s. (1)) consents, if any, have been given: sub-s. (7). "Real estate": s. 55 (1) (xix), includes leaseholds. Power of appropriation.

The power applies to the estates of testators or intestates dying before or after the Act and to property appointed under a general power: sub-s. (9).

In order to avoid *ad valorem* stamp duty on conveyances made for giving effect to an appropriation, testators will, in practice, provide that the consents required by the s. shall not be necessary: sub-s. (6). And see Statutory Will Forms, 1925, Appendix No. VII., Vol. II.

Supplementary powers are conferred on personal representatives by the T. A., 1925: see s. 68 (17) for definition of "trustee." In particular, the powers given by ss. 15 and 22 of that Act will frequently be required in connexion with the exercise of the statutory power of appropriation. Powers given by T. A., 1925.

The power given by Ad. of E. A., 1925, s. 42, to appoint trustees of the property of an infant is inserted in this Act, in preference to the T. A., 1925, because it is primarily designed to enable a personal representative to wind up an executorship or administratorship. Trustees for infants.

Effect of Mistakes.

Conveyancing with the aid of a register of title has this advantage over the other system: if a mistake is made in the form of carrying out a transaction it is generally discovered in time for it to be rectified while the parties concerned are still in touch with one another.

No doubt the legal profession will be much concerned to see that the new practice is worked well, particularly during the first ten years' trial period; still, it is too much to expect that mistakes will not occur. On this account an attempt has been made in the Acts, when practicable, to indicate what the result of a mistake will be and to minimise the inconvenience caused thereby. The following are a few examples:—

(1) If an assurance of land subject to manorial incidents is not produced to the steward for endorsement within six months it will not pass the legal estate, but the Court has power to extend the time: L. P. A., 1922, s. 129. Non-production to steward.

(2) Though manorial incidents are extinguished at the end of ten years, the lord does not lose his right to compensation for fifteen years: *ib.*, s. 140. Compensation rights.

Renewable lease. (3) A demise purporting to create a perpetually renewable lease operates to create a term of 2,000 years: *ib.*, 15th Sch., para. 5.

Contract to lease. (4) A contract to grant such a lease operates as a contract to grant a term of 2,000 years: *ib.*, 15th Sch., para. 7 (1); though a contract to renew a lease for more than sixty years is void: sub-s. (2).

Leases for lives. (5) Leases for lives at a rent or for a fine operate to create a term of ninety years terminable by notice: L. P. A., 1925, s. 149 (6).

Conveyance to infant. (6) A conveyance of a legal estate to an infant operates as an agreement for a settlement: S. L. A., 1925, s. 27. Such a conveyance to an infant and a person of full age vests the legal estate in the person of full age on trust for sale: L. P. A., 1925, s. 19 (2).

Undivided shares. (7) A conveyance to persons of full age as tenants in common is not void but vests the legal estate in them or in four of them on trust for sale: *ib.*, s. 34. That s. also deals with other attempted dispositions in undivided shares.

Rescission of contracts. (8) If a vendor makes a stipulation which is void, he cannot rescind the contract because the purchaser insists on his rights: L. P. A., 1925, ss. 12 (8), 125.

Reservations. (9) If a conveyance of a legal estate is expressed to be subject to another legal estate not in existence, nevertheless it will operate as a reservation of the latter: L. P. A., 1925, s. 65 (2).

Further assurances. (10) An express power is given to rectify mistakes in a simple manner: L. P. A., 1925, s. 66; see also as to leases under powers, s. 152.

Covenants. (11) Even if a covenantor covenants with himself and another, the covenant will be good: *ib.*, s. 82.

Mortgages. (12) If an estate owner purports to convey his estate by way of mortgage it will operate to create a mortgage term: *ib.*, ss. 85, 86.

Mortgage debts. (13) If trusts affecting a mortgage debt are disclosed this will not affect the title to the land: *ib.*, s. 113.

Satisfied terms. (14) A dealing purporting to keep alive a mortgage term, except to protect a limited owner, when the money is paid, will be ineffectual: *ib.*, s. 116.

Reconveyances. (15) An endorsed receipt will operate either as a reconveyance or a transfer as the circumstances require: *ib.*, s. 115.

Reversionary leases. (16) Reversionary leases must take effect within twenty-one years or be void: *ib.*, s. 149. It would not be feasible to accelerate the commencement of the term; that might prejudice beneficial interests.

(17) Limitations void for remoteness will be validated if the age of twenty-one years, when substituted for the age taken, would make the gift good: *ib.*, s. 163. Remoteness.

(18) A settlement in an unauthorised form will operate as an agreement for a settlement: S. L. A., 1925, ss. 4, 11, 110 (2) (d). Settlements.

(19) Conveyances which are defective for want of a vesting instrument operate as agreements: *ib.*, s. 13. Conveyances.

(20) A defect in the form of an order appointing trustees of a compound settlement will not of necessity result in bad titles being conferred: *ib.*, s. 33 (2). Orders.

(21) If a tenant for life has no inducement to exercise his powers, provision can be made for the powers to be exercised by the trustees: *ib.*, s. 23. Recalcitrant tenant for life.

(22) If the purchase-money for timber or fixtures included in a sale of land is, by mistake, paid to the tenant for life, the Court may, on the mistake being rectified, confirm the conveyance: S. L. A., 1925, s. 49 (3). Timber and fixtures.

(23) Where the trustees, on behalf of the tenant for life, deal with another body of persons, which includes one of themselves, the transaction may be confirmed by the Court: *ib.*, s. 68 (3). Confirmation by Court.

(24) Wide powers are given to rectify the register of title: L. R. A., 1925, s. 82; as a general rule the rights of the person in possession will be maintained: *ib.*, sub-s. (3). Registered land.

(25) Outstanding legal estates are automatically got in by the transitional provisions and placed in the persons who become entitled thereto under the new law, so as to enable a new start to be made: L. P. A., 1922, 12th Sch.; L. P. A., 1925, 1st Sch. Outstanding legal estates.

(26) In a compulsory area the legal estate passes by the conveyance or lease in the first instance. It is only lost if the grantee or his successor do not apply for registration within the two months or other authorised period: L. R. A., 1925, s. 123. Formerly the legal estate did not pass till the application was made: L. T. A., 1897, s. 20, and an application by a successor in title of the grantee was of no avail; the legal estate had to be got in again from the vendor or lessor. This can now be cured by registration after 1925: L. R. A., 1925, s. 69 (3). Failure to register title.

Matters requiring Attention.

The following matters require special attention:—

1. Liabilities imposed by order of Court to maintain works should be registered as land charges: L. P. A., 1922, 12th Sch., para. (6); L. C. A., 1925, s. 10, Class A. (vi). Maintenance of works.

Production of conveyances to stewards.

2. Until manorial incidents have been extinguished, conveyances (including assents) of enfranchised land must be produced to the steward within six months or the legal estate will not pass: L. P. A., 1922, s. 129. Arrears of fines and customary payments should be claimed within six years: L. P. A., 1922, s. 130 (5).

Production of renewable leases to lessors.

3. Where a lease was, before 1926, perpetually renewable, the lease or underlease, or any assignment of part of the land leased, must be produced to the lessor before 1927: L. P. A., 1922, 15th Sch., para. 10 (1) (iii).

Conveyances to give effect to contracts.

4. Conveyances are required to give effect to contracts subsisting on the 1st January, 1926: L. P. A., 1925, 1st Sch., Pt. II., para. 7 (j). The legal estate does not pass automatically in this case.

Wills affected by *Shelley's Case*.

5. The abolition of the rule in *Shelley's Case* may make the rule against perpetuities apply to cases in which under *Shelley's Case* it would not have been applicable. If two or more heirs (not heirs of the body) take by purchase they will hold on trust for sale; this must be borne in mind when the executors assent to the devise. Estates tail will not be implied in wills under the *cy-pres* doctrine or otherwise; this may also result in some limitations being void for remoteness.

See that codicils are made to make wills fit in with the new law. Consider whether entailed interests in possession should be disposed of.

S. L. A. trustees to be appointed before 1926: vesting instruments to be made.

6. After 1925, S. L. A. trustees of settlements subsisting on the 1st January, 1926, must execute instruments vesting the legal estate in the tenant for life or statutory owner. Where there are no S. L. A. trustees, they must be appointed: S. L. A., 1925, 2nd Sch., para. 1. Until the legal estate is, by such an instrument, declared to be vested in the proper person, no legal disposition *inter vivos* can be made of the land, save by a personal representative in whom it is vested or where the disposition is made to a purchaser without notice of a settlement: *ib.*, s. 13.

Counsel's certificates.

Arrange for counsel's certificates of title to be given when the vesting instrument is made: Genl. Condits., 1925.

Public Trustee, undivided shares.

7. If there are no S. L. A. trustees, and the settled land is held in undivided shares, it will vest in the Public Trustee on trust for sale: L. P. A., 1925, 1st Sch., Pt. IV.

Partitions.

8. Where land, whether freehold or leasehold, is held in undivided shares, if it is desired that the entirety should not become subject to a trust for sale, arrange to carry out a partition before 1st January, 1926, or if this is impossible, commence a partition action.

9. Effect as many enfranchisements of copyhold land as possible before 1926, to avoid the pressure of work connected with the extinguishment of manorial incidents after 1925. **Enfranchisements.**

10. Stewards should have forms of compensation agreements prepared, in accordance with the lord's title, which can be distributed among applicants for the extinguishment of manorial incidents affecting their land. It will generally be worth while to have a statutory declaration made of the lord's title, copies of which can be furnished on payment of a fee. **Compensation agreements.**

11. Reversioners entitled subject to long terms must see that some rent is collected before 1931 to prevent the term being enlarged into a fee simple under L. P. A., 1925, s. 153. **Collection of rents.**

12. Mortgages created before 1926, not protected by possession of the documents relating to the legal estate, must, unless registered in a local deeds registry, be registered under the L. C. A., as puisne mortgages, otherwise they do not rank as legal mortgages. In any case they must be registered within one year after transfer. **Registration of puisne mortgagee.**

Puisne mortgages created after 1925 must be similarly registered to secure priority. Notices to prior mortgagees must still be given: L. P. A., 1925, s. 94.

13. Annuities within the meaning of Part II. of the L. C. A., 1925, though created before 1926, should be registered as land charges, Class E. **Annuities.**

14. Other land charges, of Classes B. and C., created before 1926, should be registered within one year of transfer. Local land charges created before 1926 must be registered by the local authority within one year. **Other land charges.**

15. If land has been acquired subject to, but indemnified against, family charges or powers of charging, obtain evidence of the discharge or cesser thereof, or obtain a release of the land in question before it is dealt with, to avoid having to make title under the S. L. A., 1925. **Land subject to family charges.**

16. Always make title by the best method available; if there is a compound settlement the trustees of that settlement are the persons to receive the capital money: S. L. A., 1925, s. 1. Do not join owners of equitable interests in conveyances of legal estates when the equitable interests can be overreached: L. P. A., 1925, s. 42. Do not set out equitable interests in an abstract relating to a legal estate. If necessary, supply a separate abstract of equitable interests. Care must be taken to see how the legal estate was vested by L. P. A., 1922, 12th Sch., or L. P. A., 1925, 1st Sch. **Making title.**

Administration.

17. If land is settled before the death, see that probate or letters of administration is granted to the S. L. A. trustees specially limited to the settled land.

Assents.

18. Assents, as respects legal estates, must be in writing. If the land is held on trust for sale, the assent must be to the trustees on trust for sale. If the land is settled, it must be made by a vesting assent in favour of the tenant for life, naming the S. L. A. trustees. Do not make assents expressly subject to an overreachable equitable interest. If the equitable interest has priority to the trust for sale or the settlement give legal effect thereto, if so requested and it is capable of subsisting as a legal estate, before the assent is made. Assents can properly be made subject to legal estates.

Appointments of new trustees.

19. Do not appoint new trustees of a conveyance on trust for sale by the same instrument whereby trustees are appointed of the settlement of the proceeds: T. A., 1925, s. 35. Appointments of new trustees of realty settlements made after 1925 are not part of the title to the legal estate: *ib.* There will be a separate deed declaring who the S. L. A. trustees are, which will be placed with the vesting instrument.

Secret trusts.

A secret trust created before 1926 should be converted into a trust for sale on the requisite trusts, before 1st January, 1926, to prevent the trustees from losing their legal estate.

Vesting of legal estates on 1st January, 1926.

Destruction of satisfied terms, &c., affecting leaseholds as well as freeholds.

(1) All satisfied terms, whether derived out of a freehold or leasehold interest, will have disappeared: L. P. A., 1925, s. 5, 1st Sch., Pt. II., para. 1. If an estate owner is entitled to have another legal estate conveyed to him so as to merge or extinguish it, then that estate will be extinguished: *ib.*, 1st Sch., Pt. II., para. 2. This only applies immediately after the Act comes into force; the estate owner will not lose any protection which the estate would have afforded him if kept on foot: *ib.* This would apply to an estate outstanding in a trustee. For the above purposes land enfranchised by L. P. A., 1922, is on the same footing as freehold land.

Conversion of legal interests not capable of subsisting as legal estates into equities.

(2) All former legal interests in land which are not capable of subsisting as legal estates (*ib.*, ss. 1, 7 (1) and (2)) are converted into equitable interests: *ib.*, s. 1 (3), 1st Sch., Pt. I.

Certain terms converted into equitable interests.

When a vesting instrument has been executed in respect of settled land, legal estates created by the limitations of the settlement (*e.g.*, terms of years absolute) will be converted into equitable interests: S. L. A., 1925, 2nd Sch., para. 1 (6).

(3) By virtue of L. P. A., 1925, 1st Sch., Pts. II. to VIII.; S. L. A., 1925, 2nd Sch., paras. 2 and 3; L. P. A., 1922, 12th Sch. (as amended), and 15th Sch., legal estates are got in if necessary, and vested in the following persons, but without affecting beneficial interests. Legal estates, how vested.

Freeholds: vesting.

As to the fee simple in freehold land, including enfranchised land:—

(i) Where there is an absolute owner of full age it vests in him: L. P. A., 1925, 1st Sch., Pt. II. For instance, an equitable owner of the fee simple will acquire the legal fee simple, but not so as to divest the estates of trustees for sale. A person includes a corporation. Absolute owners of full age.

But where he has created mortgages, not being mere equitable charges not supported by a legal or equitable estate, subject to the mortgage terms, whether or not created by the Acts, vested in the mortgagees: *ib.*, Pts. VII. and VIII.

(ii) A mortgagee of full age, who has some legal or equitable estate to support his mortgage, takes a term of 3,000 years. If there are two or more mortgages, each subsequent mortgagee takes a term one day longer than the mortgagee who ranks next above him: *ib.*, Pt. VII. As to the position of mortgagees of enfranchised land, see L. P. A., 1922, 12th Sch., para. (1) (*f*). Mortgagees.

Debenture trustees are in the same position as mortgagees: L. P. A., 1925, 1st Sch., Pt. VII., para. 5.

(iii). A sub-mortgagee of full age takes a derivative term less by one day than the term vested in the principal mortgagee, who created the sub-mortgage. This applies where the sub-mortgage was made by conveyance of the fee simple: *ib.*, Pt. VII., para. 4. Sub-mortgagees.

(iv) Trustees (of full age) holding on trust for sale, take the fee simple, subject to mortgage terms, if any, in the same way as an absolute owner: *ib.*, 1st Sch., Pt. II. Trustees holding on trust for sale.

This applies to all the implied trusts for sale, *e.g.*, where by reason of the land being held in undivided shares, or being held by joint tenants (not being tenants for life) beneficially, or being as respects a legal estate, held jointly and beneficially by a person of full age and an infant, a trust for sale is implied: *ib.*, 1st Sch., Pt. II., para. 6 (*b*).

(v) Personal representatives, of full age, take in the same way (the land not being settled land) as trustees for sale: *ib.*, 1st Sch., Pt. II., paras. 3, 4, 6 (4). Personal representatives.

Tenant for life, statutory owner, or personal representative.

(vi) A tenant for life, statutory owner, or personal representative (see S. L. A., 1925, 2nd Sch., para. 2), as respects settled land, takes such legal estate as under the S. L. A., 1925, he has power to convey: L. P. A., 1925, 2nd Sch., Pt. II., paras. 5, 6 (*c*). For instance, if the fee simple is vested in a trustee on trust to pay A. an annuity, and subject thereto in trust for B. in fee simple, this creates a settlement. (S. L. A., 1925, s. 1 (1) (v).) B. has the powers of a tenant for life (*ib.*, s. 20 (1) (ix)) and accordingly takes the legal estate; but he cannot exercise his statutory powers (*ib.*, s. 13) until a vesting deed (*ib.*, 2nd Sch., para. 1) has been executed nominating S. L. A. trustees; nor, so long as the annuitant lives, can he convey any legal estate till the vesting deed is made: *ib.*, s. 13. If the annuitant dies before the vesting deed is made it can be dispensed with. These vesting provisions are also important in connexion with the getting in of interests undisposed of by the settlement, for instance the reversions and rights of reverter mentioned in s. 1 (4) and (5) of the S. L. A., 1925.

The above examples indicate the general principles, but there are some special cases to which attention should be called.

Infants.

Infants, beneficially interested.

Where an infant is immediately before 1926 beneficially entitled to a legal estate or would if of full age be a tenant for life (*e.g.*, executors may have previously assented to a life estate passing to an infant), then the settled land (which includes the legal estate) vests in the S. L. A. trustees: S. L. A., 1925, 2nd Sch., para. 3; L. P. A., 1925, 1st Sch., Pt. III., para. 1.

If there are no trustees it vests in the Public Trustee pending their appointment: *ib.* The Public Trustee may act if requested: *ib.*

Where land vests when infant subsequently attains full age.

If before the Public Trustee accepts the trust and before trustees are appointed in his place the infant attains full age then the land vests in him: *ib.*

Infant beneficially interested with a person of full age.

Where immediately before 1926 an infant is entitled beneficially to a legal estate jointly with a person or persons of full age then the legal estate vests in the persons of full age on the statutory trusts (s. 35), and power is given if there is only one trustee for the parents or guardian to appoint an additional trustee: L. P. A., 1925, 1st Sch., Pt. III., para. 2.

Infant tenant for life with a person of full age.

Where an infant is tenant for life jointly with a person of full age, then during the minority the person of full age is treated as the tenant for life: S. L. A., 1925, s. 19 (3), 2nd Sch., para. 3

(6); and under L. P. A., 1925, 1st Sch., Pt. II., paras. 5, 7 (*g*); Pt. III., para. 5, the legal estate vests in the person of full age on the trusts of the settlement.

Infants solely entitled as personal representative, trustee or mortgagee.

Where immediately before 1926 an infant is solely entitled as personal representative, trustee or mortgagee to a legal estate, or if the infant had been of full age the L. P. A. would have so vested a legal estate in him (*e.g.*, a mortgage term might have been vested under Pts. VII. or VIII. of 1st Sch. to that Act) then the legal estate or mortgage term and the mortgage debt will vest in the Public Trustee pending the appointment of new trustees in his place: *ib.*, 1st Sch., Pt. III., para. 3.

These provisions apply where two or more infants are so entitled, *i.e.*, are not entitled jointly with a person of full age.

Personal representatives, trustees and mortgagees of whom any one may be an infant.

Where immediately before 1926 personal representatives, trustees or mortgagees are jointly entitled to a legal estate, and any one of them may be an infant, or where immediately after 1st January, 1926, the legal estate would have so vested if the infant were of full age (*e.g.*, under any of the vesting provisions where a legal estate is vested in trustees or mortgagees) then the legal estate, mortgage term and mortgage debt will vest in such of them as are of full age: *ib.*, 1st Sch., Pt. III., para. 4; power is given to appoint an additional trustee if there is only one person of full age: *ib.*

Administrator during a minority.

An administrator appointed during a minority (Jud. A., 1925, s. 165), does not lose his legal estate: L. P. A., 1925, 1st Sch., Pt. III., para. 5. As to a tenant for life of full age or statutory owner taking a legal estate, see L. P. A., 1925, 1st Sch., Pt. II., para. 6 (*c*); S. L. A., 1925, 2nd Sch., para. 1.

Land held in undivided shares in possession.

Entirety vested in trustees or personal representatives.

(i) Where before 1926 the entirety is vested in trustees or personal representatives then the land vests in them on the statutory trusts (s. 35), and if there are any mortgages affecting undivided shares or equitable charges on the entirety which are not converted into legal mortgages then those mortgages and charges are put behind the trust for sale: L. P. A., 1925, 1st Sch., Pt. IV., para. 1 (1). If the legal estate is outstanding it is vested in them under Pt. II. of that Schedule subject to mortgage terms, if any, created under Pts. VII. or VIII. or otherwise subsisting: *ib.*, Pt. IV., para. 1 (1).

Such trustees or personal representatives, being independent persons, there is no objection to putting the incumbrances affecting undivided shares behind the trust for sale, particularly

as a receipt for capital cannot be given when the trust for sale or powers are exercised except by a trust corporation or at least two individuals: L. P. A., 1925, ss. 27 and 33; Ad. of E. A., 1925, s. 39; Jud. A., 1925, s. 160 (2).

If one of the trustees was an infant then the legal estate will vest in such of them as are of full age: see *sup.*

Entirety (not being settled land) vested absolutely and beneficially in not more than four persons.

(ii) Where before 1926 the entirety (not being settled land: see *inf.*) is vested absolutely and beneficially in not more than four persons of full age, free from incumbrances affecting undivided shares, it vests in them on the statutory trusts: L. P. A., 1925, 1st Sch., Pt. IV., para. 1 (2). As they are interested parties it would not be right to give them power to overreach incumbrances affecting undivided shares, but it does not matter whether there are incumbrances affecting the entirety, for these retain their priority: *ib.*, sub-para. (8).

Settled land held in undivided shares under one settlement.

(iii) Where before 1926 the entirety is comprised in one settlement, it will vest in the S. L. A. trustees of that settlement free from incumbrances affecting the undivided shares and from mortgages, not being legal mortgages, affecting the entirety, on the statutory trusts. Under these, effect will be given to the incumbrances shifted to the proceeds of sale: *ib.*, Pt. IV., para. 1 (3).

If the undivided shares are subject to different settlements this could not be done, it would be impracticable to select the set of trustees in whom the entirety is to vest.

If there are no S. L. A. trustees, then the entirety will vest in the Public Trustee on the statutory trusts, pending the appointment of trustees in his place.

As to undivided shares falling into possession after 1925, see S. L. A., 1925, s. 36; L. P. A., 1925, 1st Sch., Pt. IV., para. 2.

Other cases of undivided shares.

(iv) In all other cases where the land is held in undivided shares the entirety will vest in the Public Trustee free from incumbrances (if any) affecting undivided shares, and from mortgages, not being legal mortgages, affecting the entirety, on the statutory trusts, till new trustees are appointed: *ib.*, para. 1 (4). The persons entitled to more than a moiety can appoint new trustees with the consent of the mortgagees of undivided shares: *ib.*

Mortgagees of entirety.

The legal mortgagees of the entirety still take their mortgage terms in priority to the trust for sale: *ib.*, sub-para. (8). Where the owners of undivided shares have combined to place a mortgagee in the same position as if his mortgage had been created before the land became vested in tenants in common, then he is treated as a mortgagee of the entirety: *ib.*, sub-para. (7).

Though the statutory trust for sale and powers of management (s. 28) are as a rule to be exercised with the consent of the owners of incumbrances which have been divested, and shifted to the proceeds of sale, a purchaser will not be concerned to see that the consent has been given: 1st Sch., Pt. IV., para. 1 (9). Consents of incumbrancers.

Pending partition actions may continue, and contracts for sale in force on 1st January, 1926, by tenants in common and coparceners can be completed under the old law: *ib.*, sub-paras. (10) and (11). Partition actions.

Where the land comes to be held in undivided shares after 1925, if the land is not settled the position is controlled by L. P. A., 1925, 1st Sch., Pt. IV., para. 2, and ss. 34 to 36 and 38 of that Act; and in the case of settled land (which will be the usual case) by S. L. A., 1925, s. 36. Where the undivided shares fall into possession after 1925.

Party structures and open spaces held in common are dealt with by L. P. A., 1925, 1st Sch., Pt. V., see also s. 38 of that Act. Party structures and open spaces.

Tenancies by entireties are converted into joint tenancies: L. P. A., 1925, 1st Sch., Pt. VI.; as the husband and wife are beneficially interested, they will hold on trust for sale: *ib.*, s. 36. Tenancies by entireties.

It is conceived that, where a woman married before 1883 has acquired, but not as her separate property, a legal estate in freeholds before that year, there is nothing in the Acts to divest the estate in her, though during the joint lives the husband is entitled to the rents and profits. Women married before 1883.

Perpetual rentcharges and easements.

Perpetual rentcharges and easements held for an estate equivalent to a fee simple are subject to the same general principles as govern freehold land, that is to say, if the legal estate in the rentcharge or in the easement is not vested in the person entitled thereto, whether as absolute owner, trustee for sale, personal representative, tenant for life of full age, statutory owner, &c., the person so entitled will, on 1st January, 1926, acquire a legal estate in the rentcharge or easement; mortgagees, however, will take only a mortgage term therein: L. P. A., 1925, 1st Sch., Pt. II., para. 7. Perpetual rentcharges and easements.

Leaseholds.

Similarly the same principles in regard to the vesting, on the 1st January, 1926, of legal estates in freeholds apply to leaseholds, though the only permissible legal estate in leaseholds is a "term of years absolute": L. P. A., 1925, ss. 1 and 205 (1) (xxvii). Terms of years absolute.

The distinction to be noted is that a mortgagee of leaseholds will take a sub-term: L. P. A., 1925, 1st Sch., Pt. VIII.

Subject to this, the person entitled to the term of years absolute, whether as absolute owner, trustee for sale, personal representative, tenant for life of full age, statutory owner, &c., will take it automatically: L. P. A., 1925, 1st Sch., Pt. II. This applies as much to a rentcharge or an easement held for a term of years absolute as to leasehold land: *ib.*, para. 7.

Perpetually renewable leaseholds and leaseholds for lives.

Under the L. P. A., 1922, 15th Sch., and L. P. A., 1925, s. 149 (6), perpetually renewable leaseholds are converted into long terms of 2,000 years, and leases for lives (including a lease for years terminable with life) at a rent or granted for a fine are converted into terms of 90 years terminable by notice, hence both these classes of leasehold interests (whether or not a lease for lives was more properly designated a freehold interest) will be clothed with legal estates.

Enfranchised Land.

Copyholds for years or for lives not renewable.

Under L. P. A., 1922, s. 133, copyholds for years not renewable, vest in the person entitled thereto in any of the capacities above mentioned as a leaseholder, while copyholds for lives not renewable take effect for terms of 90 years terminable by notice: see L. P. A., 1925, s. 149 (6).

Copyholds perpetually renewable.

On the other hand, the owner of the land takes the fee simple in perpetually renewable copyholds: L. P. A., 1922, s. 135, though perpetually renewable leases derived out of perpetually renewable copyholds come within the 15th Sch., and the owners will take 2,000 years terms.

Limitation Acts.

If a title to copyhold land has been acquired under the Limitation Acts it will take effect in regard to the enfranchised land: L. P. (Amend.) A., 1924, 2nd Sch., para. 4 (2) (*f*).

Construction.

If the vesting provisions affecting enfranchised land in L. P. A., 1922, 12th Sch. (as amended) in any way conflict with the vesting provisions in L. P. A., 1925, 1st Sch., the latter will have ultimate effect: *ib.*, s. 202.

Secret Trusts.

Secret trusts.

If land has been conveyed to T., in trust for P. (*e.g.*, P. may have paid the purchase-money and arranged for the conveyance to be made to T., his nominee), under the vesting provisions the legal estate will, though the trust may not be disclosed, vest in P. This would not occur if T. held on trust for sale. To prevent the divesting P. should, before 1926, direct T. to convey the land to N. in fee simple to the use of T. and N. in fee

Trust for sale to be created before 1926.

simple on trust to sell and hold the net proceeds in trust for P., or on the trusts of a deed of even date if secrecy is still desired; at least two trustees for sale are required to make a title unless a trust corporation is acting.

Possession of deeds.

If it is desired that the legal estate should vest in P., he must take care that the deeds, including the conveyance to T., are retained in his, P.'s, possession. With them should be placed the documentary evidence showing that T. is a bare trustee for P.

On no account must P. allow the deeds to remain in the power of T., for after 1925 T. will be unable to convey or create a legal estate in favour of a purchaser or mortgagee. In the case of a purported sale by T., if the land were not vacant, the intending purchaser ought before completion to make the usual enquiries of the tenants; he may thereby discover that P. was the owner. Moreover, P. would in the case of a sale refuse to give the purchaser possession. In any case it would be gross negligence on the part of P. to allow T. to have the deeds; if the deeds were handed over by T. to a purchaser or mortgagee, P. must expect the Court to assist the purchaser or mortgagee by any means available.

Requisition as to legal estate.

After 1925, it will be common, where this point could arise, for an intending purchaser to make the appropriate enquiry to ascertain that the intending vendor or mortgagor has not lost his legal estate under the vesting provisions. The point does not arise where the land has been conveyed on trust for sale or to the uses of a settlement.

WOLSTENHOLME & CHERRY'S
CONVEYANCING STATUTES, &c.

CHAPTER I.

General effect of the Law of Property Act, 1922, as amended, with respect to the Abolition of Copyhold and Customary Tenure, the Extinguishment of Manorial Incidents, and the Conversion of Perpetually Renewable Leaseholds into Long Terms.

Lord Birkenhead's Acts.

The general principles of Lord Birkenhead's Acts, taken as a whole, are discussed in the Introductory Chapter, *sup.* A brief outline of the history of the Bills leading to these reforms is given in Chap. I. of 1 Prideaux, 22nd ed. Accordingly, it will be sufficient, in this work, to give a short statement of the effect of each Act in the chapter immediately preceding that in which the Act is printed and annotated. In the case of the L. C. A., 1925, the chapter relating to Searches Generally is for convenience placed after that Act.

Abolition of Copyhold and Customary Tenure.

This subject is dealt with by L. P. A., 1922, Pt. V. and the 12th Sch., as amended by the L. P. (Amend.) A., 1924, s. 2 and 2nd Sch.

The existence of copyhold and customary tenures has stood in the way of all comprehensive land law reform.

Enfranchisement effected by the Act.

The enfranchisement is effected by the Act itself, leaving the manorial incidents of pecuniary value to be extinguished later.

Endorsement of assurances.

While the incidents so saved remain on foot, assurances, which involve the payment of fines and fees, must

be produced to the steward of the manor for endorsement, or the other requirements of s. 129 must be complied with.

The object of this is not only to secure the payment to the lord and steward of the requisite fines and fees, but to enable them to get into touch with the actual owners of the enfranchised land, with a view to making the necessary arrangements for extinguishing the manorial incidents.

Act vests the enfranchised land in the persons entitled, apart from the title on the rolls.

The Act, in effecting the vesting of the land, pays no regard to the title of the persons, if any, on the Court rolls, save in so far as the Court rolls are evidence of the true title, but vests the land in the absolute owner, tenant for life of full age, trustees for sale, personal representatives or other persons, including corporations, in whom it ought to be vested.

The importance of the legal estate.

When ascertaining the person in whom the legal estate (*i.e.*, the fee simple in possession or term of years absolute) has become vested, regard must be had to L. P. A., 1925, 1st Sch., Pts. II. to VIII., and S. L. A., 1925, 2nd Sch. So far as these provisions, if at all, may conflict with the L. P. A., 1922, the provisions of the Acts of 1925 will prevail: L. P. A., 1925, s. 202.

Too much stress cannot be laid on the position of the legal estate, for in future its absence will mean that a title cannot be made which can be forced on a purchaser: L. P. A., 1925, s. 42.

Penalty for non-endorsement.

The penalty for not complying with the provisions of s. 129 is severe, for after six months, or such extended period as the Court allows, an assurance required to be endorsed, produced, or otherwise dealt with under that s. becomes void for the purpose of passing any legal estate.

Tenure in force during the transitional stage.

So long as the manorial incidents remain on foot a special class of tenure is, in effect, created. This tenure corresponds to that which obtained where the promoters of an undertaking purchased the interest of a copyhold tenant under s. 95 of the Lands Clauses Act, 1845, but had not purchased the rights of the lord under s. 97 of that Act.

What manorial incidents are saved.

The manorial incidents which remain to be extinguished under Part VI. are set out in s. 128 (2). In addition to these, the rights of the lord in respect of mines and minerals, franchises, fairs and sporting rights

are preserved to him by the 12th Sch. The rights so preserved can, however, be extinguished or acquired by the tenant under a compensation agreement. The lord's rights so preserved cannot be defeated under this Act without his consent.

Mines (Working Facilities and Support) Act, 1923.

This arrangement, as respects minerals, might have perpetuated an abuse under which neither the lord or tenant, desiring to work the minerals, could have done so without being subjected to legalised blackmail by the other party; a remedy for this has been provided by the Mines (Working Facilities and Support) Act, 1923, Pt. I.

Machinery for enforcing payment of fines and heriots.

Heriots can no longer be seized, but payment of the money value must be made in lieu thereof: s. 128 (2).

Seizure *quô usque* is no longer available, hence fines and heriots are made recoverable as simple contract debts: s. 130 (5).

Forfeitures.

Such forfeitures as are by s. 128 (2) allowed to remain during the transitional period, can be enforced only by action, and subject to the lord serving notice to remedy the act or neglect complained of, and to make compensation in money: s. 132 (1).

Copyholds perpetually renewable.

Where a copyhold interest is, by custom, perpetually renewable, the owner of such interest is treated in the same way as if he were entitled to the customary inheritance. Accordingly, the fee simple will vest in the same way as in the case of copyholds of inheritance: s. 135.

On the other hand, leaseholders who, by contract, have a perpetual right of renewal are under the 15th Sch. only given long terms of 2,000 years, in order to maintain the position of landlord and tenant as respects the rent reserved and the covenants and conditions in the lease.

Copyholds for life or years without a right of perpetual renewal.

Copyholds for lives are converted into terms of ninety years, terminable by notice on either side after the death of the *cestui que vie* under s. 133 and L. P. A., 1925, s. 149 (6).

S. 133 does not apply where a tenant for life has been admitted as such and his admission operates as the admission of the remainderman, nor in any other case where the copyhold estate is an estate of inheritance, whether or not any person has been admitted.

Copyholds of inheritance are dealt with by the preceding ss. and by the 12th Sch.

Nor does s. 133 apply to the interest of a lessee under a lease granted by a copyholder with the licence of the lord or under a custom.

Effect of enfranchisement.

Under the 12th Sch. the land becomes freehold, the tenant is freed from the liability to render the customary suits and services, or to do fealty.

Devolution on death.

The customs of borough English, gavelkind and other special customs are abolished, and the intestacy provisions of the Ad. of E. A., 1925, will apply.

Mortgage terms.

Mortgagees will only take mortgage terms, as respects the fee simple a long term derived thereout, as respects leaseholds a sub-term, in accordance with L. P. A., 1925, 1st Sch., Pts. VII. and VIII.

Commonable rights.

The commonable rights remain for the benefit of the enfranchised land: 12th Sch. (4).

Extinguishment of Manorial Incidents.

This subject is dealt with by L. P. A., 1922, Pt. VI. and the 13th and 14th Schs., as amended by L. P. (Amend.) A., 1924, s. 2 and 2nd Sch.

These provisions affect not only land enfranchised under L. P. A., 1922, Pt. V., but any other land affected by manorial incidents, except the rents, &c., within s. 133.

Incidents extinguished after ten years.

A statutory period of ten years is fixed, terminating on the 31st December, 1935, but capable of being extended by the Minister of Agriculture and Fisheries in manors of 1,000 tenants or more: s. 138 (1) (ii), after which the incidents will be extinguished without agreement or notice.

Voluntary extinguishment during ten year period.

During this statutory period the parties may make their own agreement for extinguishment: s. 138 (1) (a); in this case the person, who would have had power to sell the land or the manorial incidents, is given the requisite powers to effect a compensation agreement: s. 138 (5) (i) and (6). The parties may obtain assistance from the Minister: s. 138 (9). The manorial incidents become extinguished on the execution of the agreement: s. 138 (1) (a); and the land becomes charged with the compensation rentcharge (s. 138 (6)), or gross sum and interest at $5\frac{1}{2}$ p.c. (s. 138 (7)), as the case may require.

Compulsory extinguishment during ten year period.

During the same statutory period the tenant may at any time, and the lord may at any time after the 31st December, 1930, serve on the other of them a notice requiring the ascertainment of compensation for extinguishment; service of the notice operates to extinguish the incidents: s. 138 (1) (b). The Cop. A., 1894, is then applied, with amendments, for ascertaining the compensation: s. 138 (4).

The procedure is prescribed by rules made by the Minister, incorporating the provisions of the Cop. A., 1894: s. 139 (2) and Appendix No. 1.

Compulsory extinguishment at end of statutory period.

If during the statutory period the parties have not already extinguished the incidents by a compensation agreement or by notice, then at the expiration of that period the incidents are automatically extinguished: s. 138 (1) (c). Either of the parties may then apply up to the 31st December, 1941, to the Minister to determine the compensation for extinguishment; but no compensation is allowed for incidents accrued due between the 31st December, 1935, and the date of the application: s. 140 (a); nor is interest allowed for the same period: s. 140 (b).

Final extinction of claims.

No compensation is payable after the 31st December, 1941, if no application has been made: s. 140 (c).

Principles of ascertaining compensation.

The general principles applicable to both voluntary and compulsory extinguishment during the statutory period are settled by s. 139. Unless otherwise agreed, and subject to any variation of the scale by the Minister, the compensation to the lord is ascertained in accordance with a scale set out in Part II. of the 13th Sch. Forfeitures, in ordinary cases, are compensated by 20 p.c. of the annual value: para. 13; this percentage covers other matters not provided for. Save for this provision no compensation is paid for forfeitures, nor for any advantage accruing to the tenant by the extinguishment of any other incident, unless there is also a loss to the lord, nor in excess of such loss: s. 139 (1) (ii). Compensation to the steward, if appointed before the 29th June, 1922, is regulated, according to a scale, based on the amount payable to the lord: s. 139 (1) (iii) and 14th Sch.

Payment.

Provisions are made requiring the payment of compensation in a gross sum in certain cases: see s. 139 (1) (v) and notes thereto; and otherwise by a

compensation rentcharge: *ib.* Examples showing the amounts to be paid for compensation are given in the notes at the end of the 14th Sch., *inf.*

Perpetually Renewable Leaseholds.

This subject is dealt with by L. P. A., 1922, s. 146 and 15th Sch., as amended by L. P. (Amend.) A., 1924, 2nd Sch.

Subsisting leases and underleases.

Perpetually renewable leases subsisting on the 1st January, 1926, are converted by the Act into long terms of 2,000 years. Perpetually renewable underleases, created out of terms affected by the Act, and subsisting on the same date are converted into long sub-terms of 2,000 years, less a nominal reversion, each sub-term being one day less than the term or sub-term out of which it takes effect: 15th Sch., paras. 1 and 2. The term takes effect from the date of the commencement of the original leasehold interest. Existing titles will be maintained: para. 3; though the legal terms created by the Act will vest in the persons entitled to call for them: L. P. A., 1925, s. 202; 1st Sch., Pts. II. to VIII.

Fines.

Fines on renewal are converted into additional yearly rents, the first instalments become payable on the 1st January, 1927. These rents are to be ascertained (subject to any order by the Minister of Agriculture, or by the Court on appeal from him), in default of agreement, by an actuary. The fines to be paid on the next occasion for renewal are to be taken as the working basis; where the tenant has a right to renew at different times, he has an option to select the date of renewal, exercisable before 1st January, 1927: para. 12.

Implied powers and covenants.

The leases or underleases affected are deemed to contain—

(i) a power, with the consent of the persons interested in derivative interests, to determine the term or sub-term at the original renewal dates; the exercise of this power determines the rent;

(ii) a covenant to register any assignment or devolution;

(iii) a covenant to produce the lease or underlease, or an assignment of part of the property, before 1st January, 1927: 15th Sch., para. 10.

These obligations to produce documents to the lessor before 1927, to register any assignment or devolution should be carefully noted, for a default gives rise to a power to re-enter. Need to produce before 1927, and to register with lessor.

Subsisting contracts for the grant of such leases or underleases are satisfied by the grant of a long term. Subsisting contracts.

A grant made after 1925, purporting to create a perpetually renewable leasehold interest, takes effect as a demise or sub-demise of a long term, without a right of renewal, but free from payment of money expressed to be made payable on renewal. Grants after 1925.

Contracts for such grants, made after 1925, take effect in a similar way. The lessor is thus penalised by the loss of any fines expressed to be imposed. Contracts for renewal.

The lessor and lessee (including the tenant for life, statutory owner, or trustees for sale of the term or the reversion) are given power to commute the additional rent, and to apportion rent and covenants: para. 14. As a rule the parties will agree that the additional rent shall be paid on the same dates as the original rent. Commutation and apportionment.

The effect of these arrangements will be endorsed. Endorsements.

The compensation, if any, payable to the lessor's agent is borne by the lessor out of the additional rent or compensation money: para. 15. Compensation to lessor's agent.

Disputes will be settled by the Minister: para. 16. Disputes.

CHAPTER II.

THE LAW OF PROPERTY ACT, 1922.

(12 & 13 Geo. 5, c. 16.)

Arrangement of Sections.

Parts I.—IV. were repealed before they took effect, except s. 43, *so far as it relates to glebes: see S. L. A.*, 1925, *ss.* 39, 52, *and note thereto.*

Part V.

Abolition of Copyhold and Customary Tenure.

Abolition of Copyholds.

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129. Endorsement of assurances of enfranchised land by stewards, p. 12.
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Extinguishment of Manorial Incidents.

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SCHEDULES.

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13th Schedule. Compensation for extinguishment of manorial incidents, p. 74.
14th Schedule. Scale of steward's compensation for loss of office, p. 85.
15th Schedule. Provisions relating to perpetually renewable leases and underleases, p. 89.

16th Schedule was repealed before it took effect.

THE LAW OF PROPERTY ACT, 1922.

12 & 13 Geo. 5, c. 16.

An Act to assimilate and amend the law of Real and Personal Estate, to abolish copyhold and other special tenures, to amend the law relating to commonable lands and of intestacy, and to amend the Wills Act, 1837, *the Settled Land Acts,* 1882 *to* 1890, *the Conveyancing Acts,* 1881 *to* 1911, *the Trustee Act,* 1893, *and the Land Transfer Acts,* 1875 *and* 1897. [29th June, 1922.]

Be it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:-

Parts I.—IV. were repealed before they took effect, except s. 43, *so far as it relates to glebes: see S. L. A.,* 1925, *ss.* 39, 52, *and note thereto.*

Part V.

Abolition of Copyhold and Customary Tenure.

Abolition of Copyholds.

Enfranchisement of copyholds.

128.—(1) As from the commencement of this Act, every parcel of copyhold land shall by virtue of this Act be enfranchised and cease to be of copyhold or customary tenure, and land so enfranchised is in this Act referred to as enfranchised land.

The Act commences 1st January, 1926: L. P. A. (Postponement) A., 1924, and see Interpretation Act, 1889, s. 36 (2).

"Copyhold land."

"Copyhold land" is defined by s. 189, and includes customary land.

"Enfranchised land."

Thus the Act actually enfranchises the land, leaving the manorial incidents having a money value to be extinguished later.

(2) The enfranchisement by virtue of this Part of this Act shall have the effect stated in the Twelfth Schedule to this Act:

Provided that (save as otherwise expressly provided) nothing in this Part of this Act shall affect the following manorial incidents; that is to say—

(a) quit rents and chief rents and other similar rents or payments;

(b) fines, reliefs, heriots, and dues (including fees payable to stewards);

(c) forfeitures, other than forfeitures for the conveyance or attempted conveyance of an estate

of freehold in the land, and for alienation without licence whether by way of sale, lease, mortgage or otherwise;

(d) rights as to timber;

and accordingly (subject to the provisions of this Act) the enfranchised land and the persons for the time being entitled thereto shall, until the manorial incidents so saved are extinguished, remain subject thereto in like manner as if the land had not been enfranchised; but so that in lieu of any chattel liable to be seized as a heriot a sum equal to the value thereof shall be payable.

Effect of enfranchisement.

The amendments made in the 12th Sch. by the L. P. (Amend.) A., 1924, are set out *inf.* where that Sch. is printed, see the notes thereto.

"Save as otherwise expressly provided."

The words "save as otherwise expressly provided" in the proviso, refer first to the stewards fees, provided for in s. 131; secondly, to the forfeitures which can no longer arise, *e.g.*, by conveying the land as freehold, see also s. 132; and thirdly, to the conversion of heriots into equivalent money payments.

"Subject to the provisions of this Act."

"Subject to the provisions of this Act," for instance, fines and heriots will only be recoverable as simple contract debts: s. 130 (5). Again, "fines" are also regulated by that s.

Saving of manorial incidents.

The saving of the incidents mentioned in the proviso leaves the land in practically the same position as copyhold land acquired by a company under compulsory powers: Lands Clauses Act, 1845, s. 95, where the rights of the lord have not been purchased under s. 97 of that Act.

The manorial incidents mentioned in the sub-s. will ultimately be extinguished under Part VI. of this Act.

Forfeitures.

As to forfeitures, see s. 132, *inf.* The forfeitures saved are only those which are not inconsistent with the land being dealt with as freehold, but until the manorial incidents are extinguished the requirements of s. 129 must be complied with.

A fine may become payable under s. 130 (2) where a licence would have been required to prevent a forfeiture.

Saving of lord's rights.

The following rights of the lord are saved by the 12th Sch. (5): rights to mines and minerals, with rights of search and working, franchises and sporting rights.

Commonable rights.

The commonable rights, if any, of the tenant are saved by the 12th Sch. (4).

(3) Modes of assurance authorised by special custom are hereby abolished; and all land (including land held in free tenure but subject to custom) shall be dealt with as land held in free and common socage discharged from custom.

Forms of assurance assimilated.

All forms of assurance of land will now be similar to those used for ordinary freeholds. Gavelkind and borough English tenures are abolished by 12th Sch., para. (1) (d), see also Ad. of E. A., 1925, s. 45. No feoffment by an infant will be possible under the custom of gavelkind. All assurances by livery, or livery and seisin, or by feoffment, or by bargain and sale, are abolished: L. P. A., 1925, s. 51, but a conveyance will pass the possession without actual entry: *ib.* This was rendered necessary by the repeal of the Statute of Uses: L. P. (Amend.) A., 1924, 1st Sch., which collects the repeals effected by the L. P. A., 1922; repeated, L. P. A., 1925, 7th Sch.

Repeal of Statute of Uses.

Endorsement of assurances of enfranchised land by stewards.

129.—(1) So long as any of the manorial incidents saved by the last preceding section remain unextinguished as respects any enfranchised land, an assurance of that land, or of any interest therein, shall, subject as hereinafter provided, on the expiration of six months from the date of its execution, or of such extended period as the court may either before or after the expiration of those six months for any special reasons allow, become void so far as regards the grant or conveyance of a legal estate, unless the assurance has been produced to the steward of the manor.

Object of s. The object of this s. is to secure that the customary payments shall continue to be paid until the manorial incidents are extinguished. The assurance has to be produced on every occasion on which a fine, &c. has to be paid, thus giving to the lord the requisite notice.

"Enfranchised land" is defined by s. 128 (1).

"Month." "Month" means calendar month: Interp. Act, 1889, s. 3. This meaning will after 1925 apply in all documents: L. P. A., 1925, s. 61.

"Legal estate," see s. 188 (13), *inf.*, replaced by L. P. A., 1925, s. 205 (1) (x).

The importance of the legal estate. The legal estate passes by the "conveyance" (s. 188 (16)), but is liable to be divested if the conveyance is not produced within the six months or extended period. This allows legal estates to be disposed of or created in the meantime which, however, are defeasible. If the legal estate is not indefeasibly acquired, this means that a title cannot be shown: L. P. A., 1925, s. 42.

"Assurance." For the assurances to which this s. applies, see sub-s. (9), *inf.*

"Court." For the meaning of "Court," see s. 188 (6).

"Steward." "Steward" includes a deputy steward and a clerk of a manor and any person for the time being filling the character of or acting as steward, whether lawfully entitled or not: see the definition in the Copyhold Act, 1894, s. 94, which is incorporated by s. 189 of this Act; "manor" is therein defined to include a "reputed manor," *i.e.*, a manor of which there are no freehold tenants remaining.

"Manor."

Alternative method. The words "subject as hereinafter provided" refer to the alternative method, authorised in certain cases by sub-s. (10), *inf.*

(2) On production to him within the time allowed for the purpose of such an assurance and on payment of any fines, reliefs or heriots payable in respect of the transaction, the arrears (if any) in respect of any former transaction affecting the same land, and all quit or other rents, and of the prescribed fee, the steward shall forthwith return the assurance and endorse the same with a certificate in the prescribed form and manner denoting that the assurance has been so produced and if he fails to do so or refuses to accept a proper tender of the fines, reliefs, heriots, rents and fee, he shall be liable to indemnify any person who suffers or incurs any damage or expense in consequence of such failure or refusal: Provided that, if any dispute arises as to the amount

payable in respect of fines, reliefs, heriots, rents or fees, the amount demanded shall be paid or tendered, without prejudice to the right to recover any part not properly payable.

Customary payments

The right to insist on the customary payments and arrears being paid or tendered before the assurance is endorsed operates as a protection to the lord and steward if any delay occurs in extinguishing the manorial incidents under Part VI.

Person to make the assurance.

The enfranchised land vests in the true owner by virtue of the 12th Sch. as amended, and the legal estate is passed to the right person under L. P. A., 1925, 1st Sch., Pt. II., para. 3, and Pts. III. to VIII. Thus the "estate owner" (L. P. A., 1925, ss. 1 (4), 205 (1) (v)) will be the person after 1925 to make the assurance.

"Prescribed."

"Prescribed" means prescribed by regulations made by the Minister of Agriculture and Fisheries: ss. 188 (31) and 189; see Enfranchised Land (Certificate of Endorsement) Regulations, 1925, Appendix No. I., Pt. I., Vol. II.

Liability of the steward.

The liabilities imposed on the steward will prevent delay; further remedies for this purpose are provided by sub-s. (4).

(3) Such a certificate as aforesaid duly endorsed on an instrument shall be conclusive evidence that the instrument was produced to the steward within the time allowed, and a certificate on an instrument purporting to be such a certificate as aforesaid shall be taken to have been duly endorsed thereon by the steward of the manor, unless the contrary is proved.

Certificate of endorsement.

Thus, *primâ facie*, the certificate of endorsement will be deemed to be valid, and will be accepted as sufficient evidence without inquiry.

(4) If at any time it is proved to the satisfaction of the Lord Chancellor that there is and has been for at least three months a vacancy in the office of steward of any manor and that by reason of such vacancy any delay has been caused in the endorsement of an assurance, or that the steward is unwilling or unable to perform the duties imposed on him under the provisions of this section, the Lord Chancellor may, after giving at least one month's notice to the steward, if any, and to the lord (who shall have power to remove the steward and appoint another person in his place) and in default of such appointment, make an order transferring those duties to the Land Registrar, and on the making of such an order those duties shall, as respects that manor, be transferred to the Land Registrar, and this section shall apply accordingly with this modification, that the Land Registrar shall endorse the assurance with the prescribed certificate after ascertaining that all fines, reliefs or heriots payable in respect of the transaction and rents have been paid.

If after such order has been made the steward (if any) acts or attempts to act under this section he shall be guilty of an offence and liable on summary conviction to a fine not exceeding fifty pounds.

A certificate by the Land Registrar endorsed on an instrument that the instrument has been produced to him shall be conclusive evidence that the duties of the steward of the manor have been so transferred as aforesaid.

Power to remove the steward.

The power to remove the steward is in the first instance given to the lord, only on default by him will the L. C. act.

A steward removed by the lord will lose his compensation for loss of office given to him, if he was appointed before 29th June, 1922, by the 14th Sch. Where a steward is removed under this s. the Land Registrar will be entitled to such fees as a steward appointed after 1925 would have been entitled to: s. 131 (2), *inf.*

"Lord."

The "lord" is defined by the Copyhold Act, 1894, s. 94, incorporated by s. 189 of this Act, and includes a person for the time being filling the character of or acting as lord whether lawfully entitled or not, but for the purpose of effecting the extinguishment of manorial incidents the "estate owner" of the manor will be the proper person to act.

"Land Registrar."

The "Land Registrar" means the registrar under the L. R. A., 1925: see s. 188 (9).

(5) The foregoing provisions of this section shall not apply where the land has been registered under the Land Transfer Acts, 1875 and 1897, and the assurance is one which is capable of being registered under those Acts:

38 & 39 Vict. c. 87.
61 & 62 Vict. c. 65.

Provided that the Land Registrar shall not register any transfer of any such land, or any other transaction in relation to the land, or enter notice of any such other transaction until he has ascertained that all fines, reliefs, heriots and fees payable in respect of the transaction and rents have been paid, or that no fines, reliefs, heriots, rents or fees are payable.

Registered land.

The L. T. As., 1875 and 1897, are now replaced by the L. R. A., 1925.

Now that all customary land is converted into freehold, the title to such land can be registered under the L. R. A., 1925.

As to what fines and other customary payments ought to be paid while the incidents remain unextinguished, see s. 130.

(6) For the purpose of enabling the Land Registrar in any case under the last preceding subsection to ascertain whether fines, reliefs, heriots, rents and fees, have been paid, the steward (if any) shall, on the request of any person interested and on payment of the prescribed fee, give to that person a certificate that the fines, reliefs, heriots, and fees payable in respect of any transaction and rents, including arrears, if any, as aforesaid, have

been paid if that be the case, or that no fines, reliefs, heriots, rents or fees are payable, if that be the case, and if in either of those cases the steward (if any) neglects to comply with such request, or if he refuses to accept a proper tender of the fines, reliefs, heriots, rents and fees, he shall be liable to indemnify any person who suffers any loss or expenses in consequence of such neglect or refusal: Provided that, if any dispute arises as to the amount payable in respect of fines, reliefs, heriots, rents or fees, the amount demanded shall be paid or tendered, without prejudice to the right to recover any part not properly payable.

If there is no steward, the obligation to give to the registrar a certificate will fall on the lord under the next sub-s.

Obligation on stewards to give certificate as to customary payments.

(7) Until the lord appoints a steward he shall, for the purposes of this section, be subject to the same obligations as if he were the steward.

In many cases manors have been purchased by a solicitor who acts as his own steward.

Obligations of the lord.

(8) Where the duties of the steward under this section have been transferred to the Land Registrar as aforesaid, the lord shall cause any prescribed stamp used for the purpose of endorsing certificates on assurances under this section to be transferred to the Land Registrar together with the court rolls and the Land Registrar shall hold the court rolls as agent of the lord for safe custody.

For some purposes a steward has a right to the possession of the court rolls, see note to s. 144A, hence the need for this sub-s.

Custody of court rolls and prescribed stamp.

"Prescribed," *i.e.*, by the Minister, see ss. 188 (31) and 189; Appendix No. I., Pt. I., Vol. II.

"Prescribed."

(9) For the purposes of this section, the expression "assurance" does not include a will or a grant or assignment of a lease or tenancy for a year or less or from year to year, but does include an assent by a personal representative, and an order of a court of competent jurisdiction or other competent authority and a vesting declaration, operating to vest land or any interest therein in any person, and where an assurance by a personal representative is produced for endorsement the probate of the will, or the letters of administration, shall also be produced by the personal representative at the cost of the person requiring the production.

Assurance does not here include a will or codicil (s. 188 (4)), because a

"Assurance."

"Will." will is only capable of disposing of equitable interests: L. P. (Amend.) A., 1924, 9th Sch., para. 3. See also as to equitable interests, s. 188 (13), which, with s. 1, is now replaced by L. P. A., 1925, ss. 1 and 205 (1) (x).

This s., see sub-s. (1), only imposes, as a penalty, the loss of the legal estate, hence does not affect dispositions of equitable interests, such interests, see sub-s. (11), are not affected by manorial incidents.

"Tenancy from year to year." Nor does it extend to a tenancy from year to year, for this, by general custom, could have been granted by a copyholder without any licence from the lord, and without payment of a fine.

Customary payments due on death of copyholder. It is true that some fines, &c. generally became payable on the death of the copyholder, but in practice they were seldom paid till his devisee or customary heir came to be admitted. No doubt, when the lord had notice of the death, he could, after the requisite proclamations, seize *quô usque* for want of a tenant and thus compel the devisee or customary heir to apply for admission. This, again, seldom occurred in practice.

Devolution of legal estates on death. Where an estate owner dies, after 1925, his legal estate will vest in his personal representatives: Ad. of E. A., 1925, s. 1; or if the land was settled previously to his death, in his special personal representatives, namely, the S. L. A. trustees: Jud. A., 1925, s. 162; Ad. of E. A., 1925, ss. 22—24.

Assent or conveyance by personal representative to be produced. The personal representatives, whether general or special, can only pass the legal estate by a conveyance or assent. This, when executed, must be produced to the steward for endorsement. Thus in the worst conceivable case the payment of fines, &c. on a death will only be postponed till some legal dealing takes place.

Fines, &c. must be paid on extinguishment of manorial incidents. If no legal dealing takes place before the manorial incidents are extinguished, all arrears of fines, &c. must be paid when the extinguishment is effected: 13th Sch., Form No. 2; see also s. 138 (1) (i). Where the extinguishment is effected, otherwise than by agreement, then, under s. 138 (4), the provisions of the Cop. A., 1894, s. 3, under which arrears must be paid, are made applicable. If the extinguishment is effected by the lapse of the ten years period under s. 140, then the fines, &c. accrued up to the end of the tenth year must be paid: s. 140 (a).

Payment of arrears when barred as simple contract debts. Fines and heriots can be barred, after six years, as simple contract debts under s. 130 (5), but the extinguishment of manorial incidents is (see 13th Sch., Pt. I., Form 2) on the same footing as the redemption of a mortgage debt, hence all arrears, whether barred or not, must then be paid: *cf. Re Lloyd*, 1903, 1 Ch. 385. The payment of the arrears is a condition precedent to the extinguishment unless expressly or by implication waived by the lord: see s. 138 (1) (b), *inf.*; the extinguishment does not affect this right: *ib.* (1) (i).

(10) Where in any manor the practice has been adopted of leaving the customary estate in fee simple outstanding in a trustee or terre tenant on trusts for creating perpetual rentcharges or other derivative interests which under this Act are capable of subsisting as legal estates, then, if the fines, reliefs, heriots, and rents payable do not together amount to more than five shillings, an attested copy of the assurance (with any plans thereto), which (independently of this subsection) ought to have been produced to the steward, may, instead of the original being produced, be sent, on or before the expiration of six months from the date of the execution of the assurance, by registered post or delivered with a sum of ten shillings (in satisfaction of the steward's fees

and the customary payments aforesaid) to the steward, who shall thereupon send by registered post or deliver a receipt for the said attested copy and money; and such receipt, signed by or on behalf of the steward, shall be conclusive evidence that the requirements of this section have been complied with in regard to the transaction effected by the assurance; and if the steward fails or refuses to send or deliver the aforesaid receipt he shall be liable to indemnify any person who suffers or incurs any damage or expense in consequence of such failure or refusal.

Alternative to endorsement of assurance.

The alternative method thus consists of—

(a) sending an attested copy of the assurance and plan by registered post to the steward;

(b) with 10*s.*;

(c) the steward sends a receipt for the attested copy and 10*s.* by registered post. The receipt should be annexed to the deed.

When applicable.

This method does not apply unless—

(a) under the practice of the manor the customary fee simple is left in a trustee for creating derivative interests "capable of subsisting as legal estates," see s. 188 (13);

(b) the fines, &c. do not amount to more than 5*s.*

The practice referred to obtains in a few manors in the north of England.

(11) This section does not apply to dealings with interests not affected by manorial incidents.

If there are no manorial incidents, then it is immaterial to the lord what dealings with the land are affected. As to "dealings," see note to sub-s. (9), *sup.*

Provisions as to fines and heriots.

130.—(1) Until the manorial incidents saved by this Part of this Act have been extinguished the same fines shall (subject as hereinafter provided) be payable on any transaction (formerly capable of being effected by a customary assurance), which would have been payable if the land had remained copyhold and the transaction had been effected by a customary assurance, and the same payments in lieu of heriots shall be payable on the same occasions on which a heriot would have accrued if the land had remained copyhold.

"Subject as hereinafter provided," *i.e.*, in sub-ss. (2)—(5).

Payment of fines on transactions which could have been effected by a customary assurance.

In the Honor of Clitheroe there is an unrestricted right to demise or sub-demise provided the lessee or underlessee is admitted, and pays a nominal fine. Dealings with the term or sub-term, otherwise than by demise, need not always be entered on the court rolls. The admission takes the place of a licence to demise.

In this case future lessees and underlessees will remain liable to pay the nominal fines, and the requirements of s. 129 must be complied with on the grant of a lease or underlease, until the manorial incidents are extinguished.

Heriots.

A heriot is converted into a money payment by s. 128 (2).

Fines consequential on the statutory vesting of the land.

As to the fines, if any, payable by reason of the statutory vesting of the enfranchised land in persons who are not on the rolls, see 12th Sch. (8) (vi) to (ix).

(2) Where any enfranchised land is alienated whether by way of sale, lease, mortgage, or otherwise, and such alienation without the licence of the lord would have given rise to a right to forfeit if this Part of this Act had not been passed, then, so long as the manorial incidents saved by this Part of this Act remain unextinguished, the like fine shall be payable in respect of the alienation as would have been payable for a licence authorising the alienation:

Provided that, where the fine payable for such a licence is not fixed by the custom of the manor, the fine payable shall be such reasonable fine as in default of agreement between the lord and tenant may be fixed on the application either of the lord or the tenant by the Minister.

Fines to be paid in cases where licence would have been required.

Forfeitures for alienation, without licence, have been abolished by s. 128 (2), as if the land were freehold.

The "Minister" is the Minister of Agriculture and Fisheries: s. 188 (31).

"Tenant," *i.e.*, the person in whom the enfranchised land vests: s. 189, *inf.*

(3) Subject to the provisions of subsection (2) of this section, no fine shall be payable in respect of a mortgage of enfranchised land unless and until the mortgagee in exercise of any power of sale express or implied conferred by the mortgage conveys the land to a purchaser, or transfers the mortgage without the concurrence of the mortgagor, or the right of redemption is extinguished by foreclosure or otherwise.

No fine on creation of mortgage.

No fine is payable on the creation of a mortgage unless, by custom, a licence would have been required.

Fines when payable by mortgagees or purchasers from them.

Fines are payable—

(a) on a sale by a mortgagee,

(b) on a transfer without the concurrence of the mortgagor,

(c) on an extinguishment of the right of redemption,

because, in these cases, either the purchaser, or the transferor, or the mortgagee must have been admitted in order to make title.

"Purchaser."

"Purchaser" is defined by s. 188 (27) to mean a purchaser for money or money's worth.

(4) Nothing in this section shall affect the right of the lord to a double fine on a conveyance by a mortgagee, who had not been admitted before the commencement of this Act, to a purchaser, or on a transfer of his mort-

gage without the concurrence of the mortgagor, or on the extinguishment of the right of redemption under any such mortgage.

Double fine when mortgagee has not been admitted.

When the mortgagee sold he had to be admitted before he could surrender to the use of the purchaser. He could not transfer the customary estate, in the absence of the mortgagor, without first being admitted.

When a right of redemption was extinguished the mortgagee, to complete his title on the rolls, had to be admitted.

A second fine was payable if the purchaser or transferee also had to be admitted, to complete his title.

As to fines on foreclosure, see *Pryce* v. *Bury*, 1853, 2 Drew. 41.

(5) Fines and heriots (whether payable before or after the commencement of this Act) shall be recoverable as simple contract debts and not otherwise, and shall not be recoverable (in the case of fines and heriots becoming payable after such commencement) after the expiration of six years from the date when they become payable, or (in the case of fines and heriots payable at the commencement of this Act) after the expiration of six years from such commencement.

Fines and heriots recoverable as contract debts.

Disability.

The Act commences 1st January, 1926: L. P. A. (Postponement) A., 1924.

The exception in case of disability, provided for by the Limitation Act, 1623, s. 7, is not expressly incorporated, but it is conceived that, as the fines and heriots are recoverable as contract debts, this exception would, in a proper case, be implied. The references to the six years are merely to show when the period begins to run.

As to payment of arrears, on extinguishment of manorial incidents, whether or not the arrears are barred, see last note to s. 129 (9), *sup.*

As to payment of arrears, whether or not barred.

Provisions as to fees.

131.—(1) The steward of a manor shall be entitled to such fees only in respect of transactions effected after the commencement of this Act as may be prescribed by the Minister:

Provided that, where the steward is appointed before the passing of this Act, the following provisions shall (save as expressly provided in this Part of this Act) have effect, namely:—

(i) Where the transaction is one in respect of which a customary fee would have been payable if the land had not been enfranchised the prescribed fee shall be the customary fee; and

(ii) Where the transaction is a mortgage the prescribed fee shall be such customary fee as would have been payable on the conditional surrender of the land if it had not been enfranchised; and

(iii) Where the customary fee is regulated by the length of the customary assurance or other entry on the court rolls then the prescribed fee shall likewise be regulated by the length of the instrument which, after the commencement of this Act, is used to carry out the transaction or if more than one instrument is so used then by the length of the instrument containing the assurance of the land.

Fees for steward appointed before 29th June, 1922.

"Passing of this Act," *i.e.*, 29th June, 1922: *cf.* Interp. Act, 1889, s. 36; *Re Dalzell*, 1875, 2 Ch. D. 9.

The general rule is laid down in sub-s. 1 (i); a conditional surrender was the usual method of effecting a mortgage, hence fees are payable on this basis: sub-s. (1) (ii).

Payment by length.

Assurances of legal estates will be very short, see L. P. A., 1925, ss. 28, 60—69, 76—7, 87, 114—5. Express covenants and provisions of any length can be incorporated by reference to a deed of even date.

Fees for steward appointed after 29th June, 1922.

The "Minister," *i.e.*, the Minister of Agriculture and Fisheries: s. 188 (31). For prescribed fees, see Appendix No. I., Vol. II., *inf.*

For further provisions as to fees, see 12th Sch. (8) (vii), where the land vests in more than one person; (viii) where there is a tenant on the rolls; (ix) where derivative legal estates are vested by the Act.

As to compensation for stewards appointed before 29th June, 1922, see 14th Sch.

Fees consequential on the statutory vesting of the land.

As to the fees, if any, payable by reason of the statutory vesting of the enfranchised land in persons who are not on the rolls, see 12th Sch. (8) (vi) to (ix).

(2) The Land Registrar shall, in respect of the performance of any duty transferred to him from the steward under this Part of this Act, be entitled to such fees as a steward appointed after the commencement of this Act would have been entitled to.

Land Registrar's fees.

The registrar is only entitled to charge the prescribed fees when appointed to act as steward under s. 129 (4) for the purposes of endorsements and receipts.

(3) This section shall apply to fees payable in respect of land liable to any heriot, quit rent, free rent, or other manorial incident whatsoever, as well as to fees payable in respect of enfranchised land.

Fees payable when the land was not copyhold.

See also s. 138 (1), under which these manorial incidents are brought within the general scheme for extinguishment. "Enfranchised land," see s. 128 (1).

Provisions as to forfeitures.

132.—(1) Any right of forfeiture saved by this Part of this Act shall, until such right is extinguished be enforceable by action to recover possession, as if the freehold had remained vested in the lord, and not otherwise, and as if all preliminary proceedings required by custom had been taken; but shall not be so enforceable

unless and until the lord serves on the tenant a notice specifying the particular act or neglect complained of, and if the act or neglect is capable of remedy requiring the tenant to remedy the same, and in any case requiring the tenant to make compensation in money for the act or neglect, and the tenant fails within a reasonable time thereafter to remedy the act or neglect, if it is capable of remedy, and to make reasonable compensation in money to the satisfaction of the lord for the act or neglect.

Rights of forfeiture, how enforceable.

All forfeiture rights are saved, except as mentioned in s. 128 (2) (c) and 12th Sch. (1) (a), and will be enforceable by an action for possession; the latter part of this sub-s. was taken from C. A., 1881, s. 14, now reproduced by L. P. A., 1925, s. 146 (1). See notes to that s.

Customary leases not renewable.

Under s. 133, *inf.*, a right of re-entry is on 1st January, 1926, substituted for the right to forfeit by custom.

Notice to be served on "the tenant."

"Tenant" is defined by s. 189 as the person in whom the enfranchised land is vested (see 12th Sch.) by the Act, and the persons deriving title under him; this definition is by sub-s. (3) extended for the purposes of this s. to include any person in possession of the land. The object is to enable the action to be commenced against the person in possession. For the meaning of "possession," see s. 188 (3).

(2) Where the lord is proceeding to enforce a right of forfeiture, the tenant or other person interested may, in the lord's action, or in any action brought by himself, apply to the court for relief, and the court may grant or refuse relief as the court having regard to the proceedings and conduct of the parties under the foregoing provisions of this section and to all the other circumstances thinks fit, and in case of relief may grant it on such terms (if any) as to costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like act or neglect in the future, as the court in the circumstances of each case may think fit.

Compare L. P. A., 1925, s. 146 (2) and notes thereto.

(3) For the purposes of this section, the expression "tenant" includes any person in possession of the land or of the rents and profits thereof; and a right of forfeiture shall not, in any subsequent proceedings, be deemed to have been extinguished if the notice by the lord was served when the right was subsisting.

For "tenant," see s. 189, *inf.*

Notice served, when the

The "notice" is that required under sub-s. (1); the proceedings subsequent to the notice may be continued to recover compensation for the forfeiture, even

right to forfeit is subsisting, keeps alive the right of action.

if the manorial incidents have been extinguished, unless the compensation is settled when the extinguishment is effected.

(4) The provisions of section sixty-seven of the Conveyancing Act, 1881, shall apply to any notice required or authorised to be served under this section.

Method of serving notice.

The C. A., 1881, s. 67, is now replaced by the L. P. A., 1925, s. 196; the reference will be construed as a reference to the latter section: see L. P. A., 1925, s. 207 (c).

Application to copyholds for life or years without right of perpetual renewal.

133.—(1) The foregoing provisions of this Part of this Act shall not apply to any copyhold land held under a grant by the lord as copyhold for a life or lives or for years where the tenant has not at the commencement of this Act, a right of perpetual renewal, but in such case the copyhold interest of the tenant shall (save as hereinafter provided) as from the commencement of this Act be converted into a leasehold interest for the life or lives, or for years determinable on the dropping of a life, or for a corresponding legal term of years absolute, as the case may be, and the estate of the lord shall be the fee simple or freehold reversion immediately expectant on the interest so created, and the benefit of the rents, services, and conditions subject to which the copyhold interest was held shall be incident and annexed to the reversion, and the burden of the covenants or agreements expressed or implied on the part of the lord and the tenant respectively shall run with the reversion and the land respectively; and the lord shall be entitled to a right of re-entry exerciseable after thirty days default in payment of rent or on non-performance or breach of any services, covenants, agreements, or conditions, which ought to be paid, observed, or performed by the tenant, but subject (where applicable) to the provisions of section fourteen of the Conveyancing Act, 1881, as amended by any subsequent enactment.

What term is taken by the tenant.

This sub-s. converts the copyhold interest into a leasehold interest corresponding to the former copyhold interest. Thus, if the copyhold interest were a term of years absolute, that will remain. But if the interest depended on life, then the interest acquired under this s. is by L. P. A., 1925, s. 149, converted into a term of ninety years terminable with notice on either side after the occurrence of the death. Thus the lessee acquires a legal estate, subject, in effect, to rent and covenants corresponding to the former services.

What the lord takes.

The lord takes the freehold reversion, with the benefit of the rent and lessee's covenants, and a right of re-entry in place of the right of forfeiture.

S. 14 of the C. A., 1881, as amended, is now replaced by s. 146 of the L. P. A., 1925.

No compensation agreement or notice is required to bring this s. into play.

The s. comes into force on 1st January, 1926, automatically.

This s. is not applicable to copyholds of inheritance, whether or not a person has been admitted for life under a special custom, or the remainderman has or has not been impliedly admitted. These are dealt with by the preceding ss. and the 12th Sch.

Not applicable to copyholds of inheritance.

Nor does this s. apply to leases granted by copyholders, whether pursuant to a licence by the lord or under custom, where the copyholder was the grantor and remains the reversioner.

Nor to leases granted by copyholders.

There is a mixed class of case in the Honor of Clitheroe, the copyholder in fee or for years might by special custom grant a lease or underlease for any term, without licence, by means of a surrender and admission at the customary nominal rent, a nominal fine being paid; by a deed of even date the true rent was reserved to the copyholder and the lessee or underlessee entered into the required covenants. As respects the term acquired under the surrender and admission, it is, it seems, a copyhold interest held of the lord (but not granted by him within this s.) subject to the customary nominal rent. As respects the term acquired from the copyholder, it is clearly not within this s., for the reversion remains vested in the copyholder in fee or for years. By special custom, the term acquired could be dealt with, otherwise than by sub-demise, by a common law assurance. A sub-demise had to be effected in the same way as a principal demise.

Leases granted under the Clitheroe custom.

There cannot, however, be two concurrent fees simple in the same land. The person entitled to the customary estate of inheritance takes the fee simple under s. 128 and the 12th Sch., hence the lord of the manor cannot have any reversion.

Special provisions as to derivative copyhold interests.

As respects the lease, as opposed to an underlease, the case comes within 12th Sch. (8) (c), which keeps alive the manorial incidents affecting the head term until they are extinguished under Part VI.

It is conceived that the expression "copyholder in fee" will, for the purposes of 12th Sch. (8) (c), include a person deriving title under him, namely, the lessee copyholder; if this is so, then an underlease is in the same position as a lease.

In order that the lord may have any compensation for the loss of the nominal copyhold rent payable by the lessee or underlessee, and the nominal fine payable on a sub-demise, an application should be made to the Minister for an order under s. 139 (1) (viii) apportioning the compensation money between the leaseholders and the freeholders.

(2) Every interest by this section vested in the tenant shall (subject to the provisions of Part I. of this Act) be subject to the same trusts, powers, executory limitations over, rights and equities, and to the same covenants and provisions relating to user and enjoyment, and to all the same obligations of every kind, as the copyhold interest affected by this section would have been subject to if it had not been so affected.

Trusts, &c. affecting the former copyhold interest shifted to the leasehold interest acquired; vesting of legal estate.

"Subject to the provisions of Part I. of this Act" (now replaced by L. P. A., 1925, and S. L. A., 1925), this refers, in particular, to the vesting of legal estates under L. P. A., 1925, 1st Sch., Pts. II.—VIII., and S. L. A., 1925, 2nd Sch.; thus the term acquired will be automatically vested in the person of full age entitled to call for it. See also L. P. A., 1925, s. 202, under which the enfranchisement will be deemed to have been effected before that Act comes into force. Mortgagees will only take terms of years.

(3) Every such interest which, but for this subsection, would have taken effect as an interest for life or lives or determinable on the cesser of a life shall, in accordance with Part VII. of this Act, take effect for a term of ninety years determinable by notice as therein mentioned.

The provisions of Part VII., relating to this matter, are now reproduced in L. P. A., 1925, s. 149 (6).

Application to Crown and Duchy lands.

134. This Part of this Act shall extend to manors or lands vested in His Majesty in right of the Crown, or of the Duchy of Lancaster, or in right of the Duchy of Cornwall or the possessions thereof, or in the Duke of Cornwall for the time being, for any estate, whether in possession, reversion, or remainder and as respects—

(a) land belonging to His Majesty in right of the Crown, the Commissioners of Woods;

(b) land belonging to His Majesty in right of the Duchy of Lancaster, the Chancellor of the Duchy;

(c) land belonging to the Duchy of Cornwall, such person as the Duke of Cornwall or the possessor for the time being of the Duchy of Cornwall appoints;

shall, for the purposes of this Act, be entitled to act in the name and on behalf of the lord or tenant or estate owner as the case may require.

Persons to act on behalf of the Crown, &c. "for the purposes of this Act."

The "lord" for the purpose of effecting the extinguishment of manorial incidents will be the "estate owner" of the manor, see note to s. 129 (4) *sup.* Similarly, the "tenant" will be the person in whom the enfranchised land is vested (12th Sch.) and the persons deriving title under him: s. 189; not the nominees on the court rolls.

By the Forestry (Title of Commissioners of Woods) Order, 1924, these Commissioners are to be known as "the Commissioners of Crown Lands."

Application to perpetually renewable copyholds.

135. Where copyhold land is held for life or lives or for years, whether or not determinable with life, and the tenant has at the commencement of this Act, a perpetual right of renewal, subject or not to the fulfilment of any conditions, then, this Part of this Act shall apply as if the person who at the commencement of this Act was the admitted tenant or had the best right to be admitted in respect of such renewable interest, had been admitted, or (as the case may be) had the best right to be admitted, in respect of the inheritance; save that if the last admitted tenant died before the commencement of this Act his personal representatives

shall be deemed to have had the best right to be admitted (but without prejudice to the beneficial rights of his devisee, legatee, statutory next of kin, or other persons claiming under his will or on his intestacy) and the land so enfranchised shall vest in accordance with the provisions of the Twelfth Schedule to this Act.

Acquisition of the fee simple.

Under this s. the copyholder who has a perpetual right of renewal will acquire the fee simple, as opposed to a long term which a mere leaseholder would have acquired under the 15th Sch. For the tenant is deemed to have been admitted or to have had the best right to have been admitted to the inheritance.

The fee simple vests in accordance with the 12th Sch., but the provisions of L. P. A., 1925, 1st Sch., Pts. II. to VIII., and S. L. A., 1925, 2nd Sch., respecting the vesting of the legal estate, will, in case of conflict, override the provisions of the 12th Sch.

As to the compensation payable in respect of land within this s., see 13th Sch., para. 14.

Where a copyholder had a perpetual right of renewal his interest was almost indistinguishable from a copyholder entitled to the inheritance. Each had quit rents to pay and services to perform which lend themselves readily to extinguishment under Part VI.

Personal representative of deceased tenant.

If the last tenant on the rolls had died before 1926 it is convenient to treat the personal representative as the person entitled to admission in preference to a customary heir or other claimant by the custom. To this extent this class of property is treated as if it had been leasehold. This does not affect beneficial interests, or the vesting of the fee simple above referred to, if the estate of the deceased had been fully administered.

Forfeiture rights.

The rights of the lord to forfeit, if the conditions precedent to a renewed grant were not complied with, are in some cases treated as of considerable value in this class of property.

136. Nothing in this Act shall affect the services incident to Grand and Petty Sergeanty (which shall not be deemed to be manorial incidents), but the land affected shall be subject to the provisions of this Act in like manner as if, before the commencement of this Act, it had been held in free and common socage or had been copyhold land as the case may require.

Saving of Grand and Petty Sergeanty services.

Tenure abolished but services retained.

As to grand and petty sergeanty services, see Co. Lit. 105b, 108a. As to the exercise of these services, see Hals. L. of Eng., Vol. 6, p. 328. These services are picturesque and in many cases are highly valued.

Though the services are retained the special tenure is abolished. If the land was copyhold it would be enfranchised under s. 128, *sup.*

137. As regards the manors of Hampton Court, in the county of Middlesex, and Richmond, in the county of Surrey, and every or any other manor vested, at the commencement of this Act, in His Majesty in right of the Crown or of the Duchy of Lancaster, and lands adjoining or separated only by a road or boundary wall

Provisions for the protection of royal parks and gardens.

from any royal park or garden the following provisions for the protection of the amenities of royal parks, gardens, and palaces shall have effect:—

(1) The Commissioners of Works (in this section called "the Commissioners") and all persons authorised by them in that behalf shall have a right of entry upon all enfranchised land adjoining any such boundary wall or the site thereof at all times in the daytime for the purpose of inspecting the state and condition of the boundary wall and repairing, rebuilding, or reinstating the same.

Right of entry on enfranchised land.

"Enfranchised land," see s. 128 (1), *sup.*

(2) The Commissioners shall be entitled by deed under their corporate seal (to be enrolled on the court rolls of the manor within six months after execution and to be registered, in respect of restrictions, as a land charge under the Land Charges Registration and Searches Act, 1888, as amended) to impose upon any enfranchised land such conditions, stipulations, and restrictions relating to—

51 & 52 Vict. c. 51.

(a) The maintenance, repair, and reinstatement by or by the direction of the Commissioners of the boundary wall of a royal park or garden so far as adjoining the land or comprised in any building thereon;

(b) The character, height, and elevation towards the park, or garden of any future building erected on the land or any alteration of any existing building as shall in the opinion of the Commissioners be reasonably necessary for the protection of the amenities of the adjoining or neighbouring royal park or garden.

Registration of restrictions as land charges.

The restrictions must be registered as land charges under L. C. A., 1925, s. 10, Class D., otherwise they will not affect a purchaser for money's worth: *ib.*, s. 13 (2). This Act takes the place of the Act of 1888 as amended: *ib.*, s. 24 (c). Registration operates as notice: L. P. A., 1925, s. 198. As to registered land, see L. R. A., 1925, ss. 50, 59 (2); L. C. A., 1925, s. 23.

As to inspection and custody of court rolls, see ss. 144 and 144A, *inf.*

(3) Before executing any such deed, the Commissioners shall give to the tenant, or leave or affix upon the land or some building thereon, at least one month's written notice of their inten-

tion to execute the deed, and of the conditions, stipulations, and restrictions intended to be comprised therein, and shall consider any objections which the tenant or any person interested in the land may offer within the period aforesaid.

Notice of intended restrictions.

"Tenant," *i.e.*, the person in whom the enfranchised land becomes vested under 12th Sch. and L. P. A., 1925, 1st Sch., Pts. II.—VIII., and S. L. A., 1925, 2nd Sch.

(4) The conditions, stipulations, and restrictions imposed by any such deed shall, as from the commencement of this Act, be binding in perpetuity (unless released by the Commissioners) upon the land affected thereby, and the persons from time to time entitled to any estate or interest therein, and shall be enforceable by the Commissioners in like manner as restrictive covenants running (as regards the burden thereof) with the land.

Enforceable "as restrictive covenants."

Restrictive covenants made after 1925 cannot be enforced against a purchaser for money's worth unless registered as land charges, see note to sub-s. (2), *sup.* In the case of registered land, notice of the restriction must be placed on the register under L. R. A., 1925, ss. 50, 59 (2). This operates as registration of a land charge: *ib.*, see also L. C. A., 1925, s. 23.

Not capable of being discharged otherwise than by the Commissioners.

Restrictions imposed under this s. cannot be discharged or modified under the power conferred by the L. P. A., 1925, s. 84 (11).

(5) At any time after the expiration of six months from the commencement of this Act, any person interested in any enfranchised land not affected by any such deed already executed by the Commissioners may give to the Commissioners notice in writing requiring them to declare the conditions, stipulations, and restrictions (if any) intended to be imposed on such land, and the Commissioners shall, within three months after the receipt of such notice, execute such deed as aforesaid in relation to such land, or if they shall fail so to do such land shall be free from all such conditions, stipulations, and restrictions as aforesaid.

Notice after June, 1926, to Commissioners.

This gives the estate owner power to require the Commissioners, within nine months from 1st January, 1926, if he gives notice at the earliest date, to decide on the restrictions, if any, to be imposed. In other cases they have three months from the receipt of the notice.

(6) Every deed executed under this section shall be executed in duplicate, and one part shall be handed to the owner of the land affected, and the other part shall be retained by the Commissioners.

Duplicate.

The duplicate will be placed by the estate owner with his title deeds.

In the case of registered land, a copy or abstract will be filed at the Land Registry under L. R. A., 1925, s. 50.

(7) The Commissioners shall have power in their absolute discretion to release either wholly or partially and permanently or otherwise the conditions, stipulations, and restrictions so imposed by them on any enfranchised land or to waive any breach thereof.

Release of restrictions.

L. P. A., 1925, s. 84, does not apply to restrictions imposed under this s.: see sub-s. (11).

(8) Every person having or hereafter acquiring any estate or interest in any enfranchised land shall (provided a land charge is duly registered as aforesaid) be deemed to have acquired such estate or interest with notice of all conditions, stipulations, and restrictions (if any) for the time being affecting the land by virtue of any deed executed pursuant to this section.

Notice.

This sub-s. is now unnecessary, for if the restrictions are registered under the L. C. A., 1925, this operates as notice: L. P. A., 1925, s. 198. If a notice is registered under L. R. A., 1925, s. 50, dispositions will take effect subject thereto: *ib.*, s. 52.

Definitions.

For definitions specially applicable to this Part of this Act, see s. 189, *inf.*

Part VI.

Extinguishment of Manorial Incidents.

Extinguishment of manorial incidents.

138.—(1) The manorial incidents affecting enfranchised land saved by Part V. of this Act, and all manorial incidents of a like nature affecting any other land shall by virtue of this Act be extinguished in respect of the land thereby affected, but subject to the payment of such compensation (if any) in respect of any manorial incidents referred to in Part II. of the Thirteenth Schedule to this Act, whether the incidents are saved by Part V. of this Act or not, as is payable under the provisions of this Part of this Act, upon the happening of any of the following events:—

(a) where an agreement in writing between the lord and the tenant of the land, or other persons

authorised to effect agreements in this behalf, as to the compensation for the extinguishment is made within ten years after the commencement of this Act, then upon the execution of the agreement;

(b) where a notice requiring the ascertainment of such compensation is served by the lord on the tenant or by the tenant on the lord within ten years after the commencement of this Act, then upon service of the notice; but the lord shall not be entitled to serve such notice till after the expiration of five years from such commencement;

(c) where no such agreement has been made or notice served before the expiration of ten years after the commencement of this Act, then upon the expiration of those ten years:

Provided that—

(i) the extinguishment of manorial incidents so effected shall not extend to or affect the right to enforce any manorial incident which has become due or enforceable before the date of the extinguishment:

(ii) if in any manor there are not less than one thousand tenants holding land affected by manorial incidents, the Minister may, on the application of the lord or of not less than two thirds of the tenants, by order (to be published in the Gazette) extend the said period of ten years in the case of any such manor and where any such order is made the references in this Part of this Act to the said period of ten years shall be construed as if the extended period had been substituted therefor.

Extinguishment of all manorial incidents.

"Saved by Part V.," see s. 128 (2); the rights preserved to the lord by the 12th Sch. (5) can also by agreement, para. (7), be extinguished. As to grants and releases of rights: s. 138 (12), *inf.*

This s. not only affects enfranchised land, but provides for the extinguishment of incidents of a like nature affecting other land, but not land within s. 133, *sup.*; see also L. P. A., 1925, s. 191 (redemption of rents).

Compensation.

The compensation will be either a gross sum or a terminable rentcharge; the value of rights or easements acquired from the tenant may be brought into account: ss. 138 (12), 139 (1) (v). The compensation will be ascertained under the rules in the 13th Sch., Pt. II., subject to any order of the Minister under s. 139 (1) (viii). For other kinds of compensation, see Manorial Incidents (Extinguishment) Rules, 1925.

The general rule governing compensation is laid down in s. 139 (1) (ii); the Minister in making any order will no doubt have regard to this rule.

"Lord" and "tenant."

For the purposes of this Part of this Act, "lord" means any person having power to effect a compensation agreement in right of the manorial incidents. Thus a tenant for life, statutory owner, trustees holding on trust for sale, and personal representatives in whom the manorial incidents are vested, will be treated as the "lord": s. 143 (1).

"Tenant" means the person in whom the "enfranchised land" is made to vest and the persons deriving title under him, and includes the person entitled to the legal estate in, or the possession of any "other" land subject to manorial incidents, whether or not those incidents have been severed from the manor: s. 143 (1). Any person, including a mortgagee whose power of sale is exercisable, who can make a title to the land on a sale can enter into a compensation agreement: s. 138 (3), *inf.*; *cf.* 12th Sch., paras. (1) (f), (8) (f); Cop. A., 1894, s. 1.

Events effecting extinguishment.

There are three events on which the extinguishment takes place:—

(a) The execution of the "compensation agreement": sub-s. (3), *inf.*, within ten years from 31st December, 1925.

(b) Notice served by the tenant at any time within those ten years, or served by the lord at any time after 31st December, 1930, and before the ten years expires. As to notices, see s. 143 (3), *inf.*

(c) The expiration of the ten years, unless under proviso (ii) an order is made extending the time. See also, as to the effect of allowing the period to run out, s. 140.

Thus, independently of an order, there will be no manorial incidents in existence on 1st January, 1936.

Inducements to extinguish within the ten years.

The inducements to extinguish before the ten years period runs out are:—

(i) That the costs and expenses will, before the period expires, and in default of an order, be borne by the tenant under s. 140 (d): see the notes to that paragraph.

(ii) That the compensation agreement or award, or certificate, is freed from stamp duty: s. 139 (1) (vii).

(iii) That the Minister will not require either party to pay the office fees or expenses of the Ministry, unless the application is unnecessary or unreasonable: *ib.*

Notice requiring ascertainment of compensation.

The lord is not allowed to serve the notice till after 31st December, 1930, in order to give the tenant time to make arrangements for discharging the compensation, but there is nothing to prevent the tenant giving notice at any time after 31st December, 1925, or for the parties to negotiate a compensation agreement.

Arrears of fines, &c. and interest.

Arrears will be paid when the extinguishment is effected, for these are saved by proviso (i), *sup.*; but under s. 140 (a) no rents, fines, &c. can accrue after the end of the ten years, nor does interest run after the end of the ten years: *ib.* (b).

Expiration of fifteen years.

After 31st December, 1940, no compensation whatsoever will be payable unless an application has been made to the Minister before 1st January, 1941; in that case the manorial incidents are extinguished and the right to arrears of fines, &c. is lost: s. 140 (c). See also note to s. 129 (9), *sup.*

Extension of ten years period.

The order for extension will be published in the "London Gazette": s. 188 (10).

(2) A notice by the tenant requiring the ascertainment of the compensation for the extinguishment of manorial incidents may be served in respect of more than one tenement of the same manor where the tenements are held by him for the same estate and are subject to the same trusts and incumbrances (if any); and where the lord has served two or more notices in respect of more than one tenement so held by the same tenant, the tenant

may, by notice in writing to the lord, require the extinguishment to be effected in respect of all or any of the tenements as if the same had been included in one notice; provided that where a notice is served by a tenant under this subsection, any proceedings thereon shall not be invalidated by reason only that the tenements specified therein are not held for the same estate or are not subject to the same trusts and incumbrances, if any.

Notices by lord and tenant to extinguish and counter notice by the tenant.

The object of being able to give a single notice, to extend to more than one tenement held in the same right, and to give a counter notice to the lord to deal with the matter as if he had only served one notice, is to save costs: see r. 2 at the foot of the 14th Sch.

Compensation agreement after notice.

Even after notice has been served the matter can be carried out by a compensation agreement if the parties agree: s. 139 (1) (ix). In view of the wide powers of making title conferred by L. P. A., 1925, S. L. A., 1925, and Ad. of E. A., 1925, it will seldom be necessary to effect the extinguishment otherwise than by agreement.

Validation of notices by tenant.

If the notice given by the tenant would be invalid but for this sub-s., the matter will be proceeded with as if two or more valid notices had been served by him.

(3) An agreement as to the compensation for the extinguishment of such manorial incidents as aforesaid (in this Act referred to as "a compensation agreement") may be effected independently of the Copyhold Act, 1894, by the persons who on a sale would be able to dispose of the manorial incidents and the land affected thereby respectively, or may be effected under Part II. of the Copyhold Act, 1894 (as applied by this Act) by the persons who, if the land had not been enfranchised, would have been entitled to effect an enfranchisement with the consent of the Minister thereunder, but resort shall not be had to the powers conferred by Part II. of the Copyhold Act, 1894, unless the Minister is satisfied that such a course is the most convenient in the circumstances.

57 & 58 Vict. c. 46.

Compensation agreements, who to effect.

"Person who on a sale would be able to dispose," see s. 188 (8); this definition includes a mortgagee whose power of sale has arisen.

Cop. A. 1894, Pt. II., how far applicable.

For the provisions of Part II. of the Cop. A., 1894, which are made applicable, see Appendix No. I., Vol. II., Manorial Incidents (Extinguishment) Rules, 1925, and note thereto; also s. 139 (4), *inf.*; resort will, in practice, seldom be had to this procedure.

(4) Unless the extinguishment is effected by agreement independently of the Copyhold Act, 1894, the provisions of that Act shall, subject to the amendments thereto effected by and for the purposes of this Part of this Act, apply to the extinguishment of manorial incidents extinguished by or under this Act and to land

affected by such extinguishment as if "extinguishment" were therein substituted for "enfranchisement" and "land affected by extinguishment" were substituted for "enfranchised land":

Provided that in the absence of agreement as to the amount of the compensation payable on the extinguishment of manorial incidents affecting enfranchised land that compensation shall, subject to the provisions of this Part of this Act, be such as would have been payable for the enfranchisement of the land affected if it had not been enfranchised by Part V. of this Act.

Amendments of Cop. A., 1894.

The material provisions of the Cop. A., 1894, as amended by this Part of this Act, are set forth in the Manorial Incidents (Extinguishment) Rules, 1925, made under s. 139 (4): see Appendix No. I., Vol. II. For further amendments, see s. 139, *inf.*

Assessment of compensation.

"Subject to the provisions of this Part of this Act," see s. 139 (1) (ii) (viii) for the general principle, and for the details, see Part II. of 13th Sch. Subject to this, for the purpose of arriving at the compensation, the land is treated as if it had not been enfranchised.

(5) For facilitating compensation agreements, the following provisions shall have effect—

(i) Any person who, on a sale, would be able to dispose of the land affected by manorial incidents or of the manor (as the case may be) shall have power to agree to the creation of a compensation rentcharge, as hereinafter provided, in like manner as if a power for that purpose had been conferred in extension of the powers conferred by any statute or instrument under which the land or the manor (as the case may be) could have been sold, and subject to the consent in writing of any incumbrancer whose consent or concurrence is required on a sale of the land being obtained, the terminable rentcharge so created shall have the same priority as if it had been created under an award of the Minister:

Facilities for effecting compensation agreements.

Under this para. whoever would have had power to sell the land or the manor respectively can effect the agreement: see S. L. A., 1925, s. 38 (power to sell), and ss. 19 to 29 (persons capable of exercising the powers); L. P. A., 1925, s. 28, giving the S. L. A. powers to trustees holding on trust for sale. For implied trusts for sale, see *ib.*, ss. 19 (2) (infants), 25 (4) (trust to retain or sell), 31 (right of redemption barred), 32 (in personalty settlements), 34 (undivided shares), 36 (joint tenancies), 1st Sch., Pts. III. to VIII.; S. L. A., 1925, 2nd Sch.; also as respects personal representatives: Ad. of E. A., 1925, ss. 33 and 39.

Express power to sell.

No sale of settled land can be made under an express power: S. L. A., 1925, s. 108 (2); all such powers are exercisable by the tenant for life or statutory owners though expressed to be conferred on a third party: *ib.*

"Award" here appears to refer to an enfranchisement award made before 1926 and not to a certificate of the amount of compensation under s. 139 (2) (a)

No priority will be lost by accepting a compensation rentcharge by agreement. The mortgagee will not be well advised to refuse: see sub-s. 7, *inf.*

Priority of rentcharge.

(ii) The lord or the tenant shall, at the request of the other, furnish a statutory declaration stating particulars of his estate or interest in the manor or in the land affected by manorial incidents and giving such further information (if any) as may be required to show who has power to enter into the compensation agreement as respects the manor or the land and to give a receipt for the compensation money or any instalment thereof:

The statutory declaration, as respects the tenant's title, will generally be of more importance to the lord where a rentcharge is taken than a like declaration respecting the lord's title would be to the tenant, for under L. P. A., 1925, s. 44 (7), the compensation agreement becomes a good root of title as respects the freehold interest and the right to give a receipt for the compensation money, but it will generally be worth while for the lord to have a declaration made as to his own title, which can be produced to each tenant. The statutory declarations, if made, will take the place of abstracts of title. It must be shown that all proper vesting instruments have been made if the manor or the land is settled. Whether any searches should be made under L. C. A., 1925, or in deeds registers, &c. will depend on the circumstances of each case.

Statutory declarations as to title to the manor and enfranchised land.

(iii) If the declaration furnished by the lord shows who has power, as respects the manor, to enter into the compensation agreement and give a receipt for the compensation money or any instalment thereof then in favour of the tenant, if the agreement and receipt are entered into and given in accordance with the declaration, the same shall be valid, and the receipt shall effectually discharge the person paying the compensation money or any instalment thereof from being bound to see to the application or being answerable for any loss or misapplication thereof:

This para. gives a certificated title, but see note to last para.

Certificated title of the lord.

(iv) Where the compensation money or any instalment thereof is paid in accordance with such declaration to a person not entitled to receive the same, he shall be deemed to have received the money as trustee for the persons entitled thereto:

Thus if the compensation money is by mistake paid to a tenant for life, he will hold it in trust for the S. L. A. trustees.

Trusteeship of compensation money.

(v) If the declaration furnished by the tenant shows who has power, as respects the land, to enter

into the compensation agreement, then the agreement if made in accordance with the declaration shall, in favour of the lord, be valid:

Certificated title of the tenant.

Thus if the declaration shows that the enfranchised land belongs to personal representatives, or trustees for sale, they will be the persons to enter into the agreement and furnish the compensation money. If it shows that the land belongs to a tenant for life, he will enter into the agreement, while his S. L. A. trustees will at his direction furnish the compensation money. The declaration is only conclusive in favour of the lord, a subsequent purchaser of the land is not bound to accept it.

(vi) The costs incurred by a lord or tenant in furnishing the declaration shall be recoverable from the person requiring the declaration to be furnished, and any costs so recoverable by the tenant from the lord may be deducted from the compensation.

Costs of statutory declaration.

Thus the costs of the statutory declaration are thrown on the person who requires the evidence to be furnished; this is in accordance with the principle in L. P. A., 1925, s. 45 (4) (b).

(6) Where a compensation agreement provides for the creation of a compensation rentcharge, and the compensation is to be paid by equal annual instalments with interest secured by an annual terminable rentcharge issuing out of the land comprised in the agreement or any part thereof, that agreement shall operate by virtue of this Act as a grant by all necessary parties of an annual terminable rentcharge of the agreed amount (varying with the amount of the principal and interest for the time being payable) issuing out of the land agreed to be charged therewith of the like nature and with the like incidents as if the agreement had been effected under the Copyhold Act, 1894, as amended by this Act.

Variable and terminable compensation rentcharges.

Thus the compensation agreement (for a Form see 13th Sch., Pt. I.) will operate as a grant of the rentcharge, and will not on that account carry any stamp: s. 139 (1) (vii). The rentcharge, provided that mortgagees of the land consent to the arrangement, will have the same statutory priority as if created under an award: Cop. A., 1894, s. 27 (c); see sub-s. (5) (i), *sup.* The rentcharges are redeemable: s. 139 (3); see also L. P. A., 1925, s. 191; S. L. A., 1925, s. 73 (1) (viii).

For the provisions of the Cop. A., 1894, relating to compensation rentcharges, see Manorial Incidents (Extinguishment) Rules, 1925, Appendix No. I., Vol. II.

Gross sums.

As a rule, however, the compensation money will be payable in a gross sum: ss. 139 (1) (v), 142 (b).

(7) Where the compensation (whether ascertained by a compensation agreement or under the Copyhold Act,

1894, as applied by this Act) is to be a gross sum (not payable by instalments) then the land formerly affected by the manorial incidents shall, in priority to any other incumbrances (except tithe rentcharge and any charge having priority by statute), stand charged with the payment of that sum and interest thereon payable half-yearly at the rate of five and a half pounds per cent. per annum from the date of the extinguishment until paid, and for the purpose of recovering the same the person entitled to give a receipt therefor shall, after the expiration of six months from the time when the amount was ascertained, have all the powers conferred by the Conveyancing Act, 1881 (as amended by any subsequent enactment) on a mortgagee by deed whose power of sale has arisen, and as if the land had been charged by way of legal first mortgage to him.

Charge of a gross sum and interest.

In this case the consent of a mortgagee (*cf.* (5) (i), *sup.*) of the land is not required. The charge has priority to everything except tithe rentcharge and "any charge having priority by statute," *e.g.*, land improvement or drainage charges: *cf.* Cop. A., 1894, ss. 19 (3), 27 (c), 36 (7).

Rate of interest.

The rate of interest after the amount was ascertained was four per cent. under the Cop. A., 1894, s. 8 (1), but under this sub-s. a five and a half per cent. rate has been adopted; and see s. 139 (1) (x). The Table at the end of the 13th Sch. has been calculated on a five per cent. basis.

Legal mortgagee's power to sell.

A legal mortgagee now has power to sell the fee simple under L. P. A., 1925, ss. 88, 101, 103—7.

(8) A receipt for any gross sum or an instalment thereof payable for compensation and the interest thereon shall (but without prejudice to the right of any person interested to recover the interest from the person to whom it is paid) be a sufficient discharge for the same if given by—

(a) The lord, where the agreement is effected under Part II. of the Copyhold Act, 1894;

(b) The person who would have been entitled to give a receipt for purchase money arising on a sale of the manorial incidents, where the agreement is not effected under Part II. of that Act.

Receipts for gross sums and instalments.

As a rule the receipts will be given under para. (b); only where the powers of the Minister are resorted to will it be necessary to proceed under para. (a): *cf.* Cop. A., 1894, s. 26.

(9) If it appears to the Minister that it is the general wish of the lord and the tenants of any manor that the Minister should assist the parties in arriving at com-

pensation agreements, the Minister may give such assistance, and may for that purpose employ an officer of the Ministry or any other person possessing special knowledge of the matters in question.

Assistance of the Minister in effecting agreements.

For instance, in manors within the Honor of Clitheroe, or in other manors where derivative interests are entered on the court rolls, some assistance may be required.

The provisions in Part VI. of this Act, relating to the ascertainment of compensation, do not apply to copyholds for life or for years without a right of renewal, within s. 133, but they do apply to perpetually renewable copyholds within s. 135: see notes to those ss.

Costs or fees.

The Minister will not charge any fees if the case comes within s. 139 (1) (vii).

(10) *Where the manorial incidents formerly affecting any land have been extinguished, then under a contract to sell and convey the freehold, the purchaser shall not, in the absence of any stipulation to the contrary, have the right to call for the title of the person entering into any compensation agreement or giving a receipt for the compensation money, to enter into such agreement or to give such receipt, and shall not be deemed to be affected with notice of any matter or thing of which, if he had contracted that such title should be furnished, he might have had notice.*

Compensation agreement a root of title to the freehold interest.

This sub-s. has been repealed by L. P. A., 1925, 7th Sch., and is replaced by s. 44 (7).

(11) The forms of compensation agreement and receipt for rents, fines, reliefs, heriots, and fees, and for compensation money contained in Part I. of the Thirteenth Schedule to this Act may, when effected otherwise than under the Copyhold Act, 1894, be used, with such variations as the circumstances of each case may require, and shall be deemed sufficient in the cases to which such forms apply.

Form of compensation agreement and receipt.

The form given in Part I. of 13th Sch. is designed to illustrate as many cases as practicable. In practice it will be adapted to the case in hand according to the respective titles of the lord and the owner of the enfranchised land. It will generally be worth while for the lord to have a form prepared applicable to his title which he can show to each applicant.

Extinguishment under the Cop. A., 1894.

When the extinguishment is effected under the Cop. A., 1894, the Minister will give a certificate under s. 139 (2) (a), *inf.* This will seldom be resorted to: see sub-s. (3), *sup.*

(12) The lord and the tenant or other persons authorised to effect the compensation agreement, may in writing agree that any right of the lord which is preserved by the Twelfth Schedule to this Act, shall be

treated as a manorial incident and be extinguished as if it were a manorial incident saved by Part V. of this Act or that there shall be granted to the lord as compensation or as part of the compensation for the extinguishment of manorial incidents, any estate or right of the tenant or any right of way or other easement in or over the land affected for more effectually winning and carrying away any mines or minerals under the land, including any right to let down the surface:

Provided that, where any such agreement relates to mines or minerals, the consideration for the estate or right shall be determined by agreement and not otherwise, and any such agreement for the extinguishment of the right of the lord in or to any mines and minerals shall, subject to the provisions of the agreement, operate as a conveyance to the tenant of such right notwithstanding that the agreement may not be under seal.

Rights of the lord.

The "rights of the lord," *i.e.*, in mines and minerals, 12th Sch., para. (5), fairs, &c., and sporting rights: *ib.*, may thus be brought within the compensation agreement.

Grant by tenant of rights to lord.

If the tenant grants rights to the lord this will reduce the compensation money, and the grant must be under seal: 13th Sch., Pt. I., note to Form No. I.; L. P. A., 1925, s. 52.

Mines, grant of.

The compensation agreement will operate as a conveyance of the lord's rights in minerals, when included, without attracting stamp duty: s. 139 (1) (vii); this special form of conveyance is saved by L. P. A., 1925, s. 7 (3) (c); see also s. 52 (2) (g). The rights may be extinguished after 1935 by an ordinary deed.

Facilities for extinguishing manorial incidents and compensation rentcharges.

139.—(1) For facilitating the extinguishment of manorial incidents under this Part of this Act whether effected under the Copyhold Act, 1894, as applied by this Part of this Act, or independently of that Act, the following provisions shall have effect, and shall, if the extinguishment is effected under the Copyhold Act, 1894, as so applied, have effect as amendments of that Act:—

Amendments of Cop. A.

The amendments in this s. are supplementary to s. 138 (4); see also sub-s. (2), *inf.*

(i) The lord and the tenant respectively shall furnish to the other and to the Minister any information in his possession, including any plan or map of the land affected, which the other or the Minister may reasonably require with a view to ascertaining what would be the proper amount of compensation:

Plans and information.

The description on the rolls of copyhold land is notoriously out of date, hence

a plan will be required in nearly every case. As to information respecting title, see s. 138 (5) (ii).

(ii) No compensation shall be paid to the lord for loss of any right to forfeiture, except as provided by Part II. of the Thirteenth Schedule to this Act, nor for any advantage accruing to the tenant by reason of the extinguishment of any other incident unless the extinguishment of the incident occasioning the advantage is a loss to the lord as well as an advantage to the tenant, nor in excess of such loss:

General principle respecting compensation.

This para. enacts the general principle respecting compensation, the details are worked out in Part II. of the 13th Sch., see notes thereto; see also s. 138 (4), *sup.*; Cop. A., 1894, s. 6; M. I. (Ext.) R., 1925, r. 3.

(iii) The compensation, if any, for loss of office, payable to the steward, when appointed before the passing of this Act, shall (in default of agreement) be such as is set out in the Fourteenth Schedule to this Act:

Compensation to the steward.

Only stewards appointed before 29th June, 1922, will be compensated under the 14th Sch. Where the lord acts as his own steward no compensation is payable under this Sch., but if he is a solicitor he will be entitled to his costs: see rule 4 in that Sch. The steward's compensation is treated as part of the lord's compensation: see next para.

(iv) The compensation, if any, to the steward shall be paid by the lord or the person effecting the compensation agreement in right of the manorial incidents, and the amount thereof and any costs or expenses paid or incurred by the lord which are, by virtue of this Act, or by agreement, recoverable from the tenant, shall be added to, and treated as part of the compensation for the extinguishment of the manorial incidents; and the lord or other person aforesaid may require the amount of compensation so paid by him and his costs and expenses incurred in connexion with the extinguishment to be discharged out of capital money held on the trusts of any settlement of the manor, or out of personal estate held on the same trusts as the proceeds of sale of the manor are directed to be held, or may charge the amount on the manor or on land settled on the same limitations or trusts as the manor, or on any

rentcharge arising in respect of the extinguishment of any manorial incidents within the manor, and such charge shall be by charge by way of legal mortgage, or by a certificate of charge under the Copyhold Act, 1894, which shall have the same effect as a charge by way of legal first mortgage:

Steward's compensation.

Thus, when once the amount of the compensation is fixed, the steward must look to the lord for payment, the tenant is not concerned to see that the steward obtains compensation. The steward's compensation as well as the other compensation to be provided by the tenant is payable out of capital money: S. L. A., 1925, s. 73 (1) (vii).

Costs recoverable from the tenant.

As a rule the tenant is treated as the person who will benefit by the extinguishment, hence he must pay the costs, but there are exceptions: s. 140 (d).

If the lord requires the tenant to make a statutory declaration as to his title the lord must pay for it: s. 138 (5) (vi).

Person who serves the notice liable for costs.

If the tenant serves a notice to extinguish under s. 138 (1) (b), as will usually be the case, s. 139 (1) (ix) will apply, and the costs will be payable by the tenant as the applicant; this is without prejudice to any agreement which (having regard to s. 140 (d), which applies if no notice or compensation agreement is given or made within the ten years) may be made between the parties. Unless the lord is satisfied that under s. 140 (d) he will be made liable for costs, he will not usually serve the notice.

Costs of lord, how payable or raisable.

This para., as respects costs which are payable by the lord, enables them to be paid out of capital money, or personal estate held with the manor, or, if necessary, to be raised by mortgage: S. L. A., 1925, ss. 71 (1), 73 (1) (xx); L. P. A., 1925, s. 28; Ad. of E. A., 1925, s. 39.

(v) Unless the compensation for the extinguishment of the manorial incidents is within thirty days after the ascertainment thereof paid in a gross sum, the compensation shall (unless the parties otherwise agree) be paid by twenty equal annual instalments, the first instalment to be paid on the first day of January next after the ascertainment of the amount of the compensation, with interest at five and a half per cent. per annum on the amount of the compensation from the date of the extinguishment of the manorial incidents, and a further instalment, with interest at the like rate on so much of the compensation as for the time being remains unpaid, shall be paid on every subsequent first day of January until the whole compensation shall be fully paid, and so long as any of the said instalments and interest or either of them remain payable, the payment of the compensation shall be secured by a terminable rentcharge issuing out of the land to which the manorial

incidents attached equal to the said instalments and interest, payable on the same days but accruing from day to day, and varying with the amount from time to time payable:

Provided that, if the land affected is settled land, and there is sufficient capital money whereout the compensation may be discharged, or if the land affected is held on trust for sale and there is sufficient personal estate (not being chattels real) settled on the same trusts as the proceeds of sale whereout the compensation may be discharged, or if the compensation does not exceed twenty pounds, the compensation shall (unless the court on the application of any person interested otherwise directs) be paid in a gross sum (not by instalments), and in the former cases (subject to any order of the court to the contrary) shall be paid out of such capital money or personal estate, and in any such case may, subject as aforesaid, be recovered by the lord or other person entitled to give a receipt therefor as a debt due to him from the tenant or the trustees of the capital money or personal estate, as the case may be, with interest thereon from the date of the extinguishment at the rate of five and a half per cent. per annum:

"After the ascertainment": this refers to the compensation and the costs to be added thereto under the last para.

Compensation rentcharges terminable and reducible.

Under this para. a compensation rentcharge, unless previously redeemed (see sub-s. 3, *inf.*), will continue for not more than twenty years from the date of ascertainment of the gross sum. A twentieth part of the gross sum is payable every year, plus interest at 5½ p.c. on the amount remaining unpaid. Thus after each year the instalment payable is reduced, for there is less principal attracting interest. Each instalment of principal and interest combined is payable on 1st January in each year.

Gross sum, when payable.

In any case the tenant may pay the compensation in a gross sum if he pays it within thirty days from the time when the amount of compensation is ascertained.

The compensation must, unless the court otherwise directs, be paid in a gross sum in the following cases:—

(a) Where it does not exceed 20*l.*, see *sup.*

(b) Where the enfranchised land is settled land, and there is sufficient capital money out of which it can be discharged, *sup.*

(c) Where the enfranchised land is held on trust for sale, and there is sufficient personal estate held with it, out of which it can be discharged, *sup.*

(d) Where the compensation is payable in respect of a derivative legal estate, not being the fee simple: s. 142 (b).

No capital compensation is payable where the copyholder takes a leasehold interest and pays rent under s. 133.

Under this para. the lord or other person entitled to the gross sum (*e.g.*, S. L. A. trustees) can recover the gross sum as a debt with interest at 5½ p. c. Remedies of the lord.

The sum becomes a first charge on the enfranchised land in priority to other incumbrances (except tithe rentcharge and any charge having priority by statute) and the person entitled to give a receipt can, after six months, raise the money by a sale: s. 138 (7); see also L. P. A., 1925, ss. 7 (3) (c), 88, 101, 103—107.

The gross sum and instalments attributable to capital are payable out of capital money: S. L. A., 1925, s. 73 (1) (vii). No income has to be accumulated under s. 39 (2), *ib.*, for the rentcharge varies according to the amount of the principal repaid. Capital money.

If a compensation rentcharge is created it is a legal estate; the agreement is not a puisne mortgage within L. C. A., 1925, s. 10, Class C, unless made to secure a gross sum not immediately discharged. A land charge should be registered unless the compensation is paid forthwith.

(vi) Where any land subject to any manorial incidents is intermixed with, or held or occupied together with, other land, and the land subject to the manorial incidents cannot be identified on the Ordnance Survey map by the description thereof on the rolls of the manor, or otherwise, it shall be lawful for the Minister on the application in writing of the lord or the tenant by order to declare what part of the land so intermixed, or held or occupied together, shall be, or be deemed to be, the land subject to the manorial incidents in question, and to determine and declare the situation and boundaries thereof, and on such order being made, the land described in such order shall be, or be deemed to be, the land subject to the manorial incidents in question, and such land shall, if the lord or tenant so desire, be defined by reference to the Ordnance Survey map:

This follows on the lines of Cop. A., 1894, s. 52; having regard to the inadequate description generally placed on the rolls, this power is essential. Minister's power to identify the land.

(vii) Where manorial incidents have been extinguished within ten years after the commencement of this Act by agreement or by notice, the agreement, award, compensation charge, or certificate shall not be chargeable with any stamp duty, and the Minister shall not require the payment by either party of any office fees or other expenses of the Ministry, except in the case of an application to the Minister which the Minister considers to have been unnecessary or unreasonable:

This is one of the inducements to extinguish the incidents within ten years. Freedom from stamp duty and from the Minister's fees.

"Application," *i.e.*, for any purpose, *e.g.*, for assistance in carrying out a compensation agreement, or consequential on a notice. As to stamps, see note to M. I. (Ext.) R., 1925, Appendix No. I., Vol. II.

(viii) The compensation shall, unless otherwise agreed, be ascertained in accordance with the scale set out in Part II. of the Thirteenth Schedule to this Act, which scale shall be binding as a matter of law in all cases, unless on application being made to the Minister on the part either of the lord or the tenant, the Minister decides that owing to any special customs or other exceptional circumstances the application of the scale would work injustice to either party, and if the Minister so decides, the Minister may, if he thinks fit, vary the scale, or fix some other scale which shall be applicable to the case; and where, by reason of the existence of concurrent legal estates in the same land or otherwise, the Minister considers that it would be unjust for the compensation money to be borne exclusively by the estate in fee simple, he may (subject to appeal to the court) decide, as between the fee simple and derivative interests, how the compensation money is to be borne, and whether by all or any of the derivative interests to the exclusion of the fee simple or of any of such interests, but not so as to affect prejudicially the interests of a mortgagee.

On the application of the lord or of at least twenty tenants a general order may be made under this paragraph as respects any manor:

Power to vary the scale. The scale differs slightly from that in force before 1926 under the Cop. A., 1894, s. 66, but is made binding subject to an order of the Minister to the contrary.

Concurrent legal estates. He can not only vary the scale, but provide for the contribution to be made by derivative legal estates, such as long terms, as in the Honor of Clitheroe. Originally the Bill was drawn on the footing that the compensation should be paid in the first instance entirely by the copyholder in fee, and he could be given under this para. a right to recover the compensation or a part of it from the lessees or other owners of derivative interests. This was objected to, hence s. 142 provides for the respective interests being treated separately where the fines in the manor are certain. This will involve heavy costs in connexion with compensation agreements which might have been avoided had the original scheme been allowed to stand.

Multiplication of compensation agreements.

Appeals. "Subject to appeal to the court," see s. 143 (4), *inf.*

Mortgagee. A mortgagee will not pay compensation till the right of redemption is or will be barred.

The last three lines of this para. were inserted by L. P. (Amend.) A., 1924, 2nd Sch., para. 3.

(ix) If the notice requiring the ascertainment of the amount of compensation is given by the lord to

the tenant or by the tenant to the lord within ten years after the commencement of this Act, the party giving the notice shall, except so far as otherwise provided by this Part of this Act, bear the expenses incurred by the other party in respect of the proceedings for extinguishment, unless the Minister considers that his conduct has been unreasonable, or that he has unreasonably refused a proposal made by the party giving the notice, in which case the Minister may disallow the payment of the whole or any part of the expenses incurred as the Minister may consider just:

Provided that the lord and the tenant may, notwithstanding that a notice has been served, at any time within ten years after the commencement of this Act and before the amount of the compensation has been ascertained pursuant to such notice, agree (subject to discharging any costs incurred in relation to the notice) to extinguish the manorial incidents by a compensation agreement:

The incidence of expenses of extinguishment.

Under this para. the expenses are thrown on the person giving the notice; this will usually be the tenant, for in the great majority of cases the extinguishment will be for the benefit of the tenant rather than the lord. As to the expenses where the extinguishment is effected by effluxion of time, see s. 140 (d). As the expenses under a notice will usually be paid by the tenant it is obvious that, when the extinguishment is effected by agreement, the lord will insist on the expenses being paid by the tenant.

Special costs provided for by the Act.

The costs of a statutory declaration (s. 138 (5) (vi)) and of a plan (13th Sch., Pt. I., note to 1st Sch. to Form of Compensation Agreement) will be borne by the person requiring it.

Ascertainment of compensation.

Even where notice has been served most extinguishments will be effected by agreement, for the facilities afforded to the parties to fix the amount by agreement are wide enough to cover nearly all cases without the assistance of the Minister.

(x) Where in the Copyhold Act, 1894, interest is fixed at the rate of four per cent. per annum, the rate shall be increased to five and a half per cent. per annum; and references to perpetual compensation rentcharges shall be construed as referring to compensation payable by instalments and secured by a terminable rentcharge:

Amendments of the Cop. A., 1894.

For the parts of the Cop. A., 1894, made applicable for ascertaining compensation, see Appendix No. I., Pt. I., Vol. II.; some references to perpetual rentcharges are obsolete. References to rates, other than four per cent. (*e.g.*, in ss. 26 (3) and 36 (5)), remain unaltered.

(2) For further facilitating the extinguishment of manorial incidents under this Part of this Act, where the

extinguishment is effected under the Copyhold Act, 1894, as applied by this Part of this Act, the following amendments shall be made in the Copyhold Act, 1894:—

(a) A certificate under the seal of the Minister stating that the compensation for extinguishment has been duly ascertained to be the amount stated in the certificate shall be conclusive evidence of the facts so stated:

Certificate of ascertainment of compensation.

This certificate takes the place of an enfranchisement award under the Act of 1894. See notes to M. I. (Ext.) R., 1925, Pt. VI., Forms Nos. 2 and 3, Appendix No. I., Vol. II.

(b) The compensation for the extinguishment of manorial incidents may (save where the provisions of Part VI. of the Copyhold Act, 1894, are applicable) be paid to the lord who, if entitled to a limited estate only in the manor, shall forthwith pay the sum received into court or to trustees in the manner provided by the Copyhold Act, 1894, and until such payment he shall be deemed to hold the money as trustee for the persons entitled thereto. The receipt of the person hereby authorised to receive the compensation shall be a sufficient discharge for the money, and the person paying it shall not be bound to see to the application thereof or be liable for its misapplication or loss. But the provisions as to payment of compensation contained in Part VI. of the Copyhold Act, 1894, shall in the cases therein mentioned apply to the payment of compensation under this Part of this Act:

Compensation paid to a limited owner.

This sub-s. only applies where the extinguishment is effected under the Act of 1894: see Appendix No. I., Vol. II. In the ordinary way the compensation will be paid to S. L. A. trustees when the manor is settled, or to trustees for sale when it is held on trust for sale, or to personal representatives when vested in them. When the compensation agreement is made by mortgagees of the manor, as having power to sell it, they will give a receipt for the money. If they concur with the mortgagor, it is a matter for arrangement between them.

(c) Any valuation required to be made for the purpose of assessing compensation shall, unless the parties otherwise agree, be made by a single valuer appointed (in default of agreement between the lord and the tenant) by the Minister, and his remuneration shall, in default of agreement, be fixed by the Minister.

One valuer only for ascertaining compensation.

This amendment is designed to reduce costs. The valuer's remuneration is fixed by the Minister, for he only acts when a notice is served requiring the compensation to be ascertained by the Minister. If the parties do not agree the compensation, only one valuer can be employed: M. I. (Ext.) R., 1925, r. 2.

(3) The person who, on a sale, is able to dispose of the land out of which a compensation terminable rentcharge issues may, at any time, on giving not less than one month's notice to the person who on a sale would be able to dispose of the compensation rentcharge, redeem the rentcharge and require the same to be released on payment of the amount of the instalments of principal remaining unpaid with interest up to the date of payment at the rate of five and a half pounds per centum per annum, and may require that any capital money or personal estate which would (if the manorial incidents had not been extinguished) have been applicable for discharging the compensation for the extinguishment of manorial incidents, shall be applied in redeeming the instalments of principal; and the redemption money shall be paid to the person (if any) who would have been entitled to give a receipt for the net proceeds of sale of the rentcharge if sold and shall be held on the same trusts (if any) as such proceeds would have been held; and if there is no such person capable of disposing of the said rentcharge or of giving a receipt for the redemption money therefor, the same may be redeemed under the provisions of section forty-five of the Conveyancing Act, 1881 (as amended by any subsequent enactment), and the expenses incurred in redeeming the rentcharge shall be dealt with on the same footing as the expenses incurred in redeeming a mortgage.

Redemption of compensation rentcharges.

"Persons who on a sale, &c.," *e.g.*, tenants for life and other persons having the powers of a tenant for life under S. L. A., 1925, ss. 19—29, this includes the statutory owners while there is a minority or where there is no tenant for life: *ib.*, s. 23; trustees for sale: L. P. A., 1925, s. 28; and personal representatives: Ad. of E. A., 1925, s. 39. As to the application of capital money or personal estate for the purpose of redemption, see s. 139 (1) (v), *sup.*

Alternative method of redemption and apportionment.

C. A., 1881, s. 45, has been repealed, and is replaced with amendments by L. P. A., 1925, s. 191. See also S. L. A., 1925, s. 73 (1) (viii).

Expenses.

"Expenses incurred in redeeming a mortgage": thus the costs are thrown on the person redeeming.

(4) The Minister may make rules for prescribing the procedure under this section and the manner in which any notice under this section may be served, and generally for giving effect to the provisions of this Part of this Act, and the rules so made shall set forth the provisions of the Copyhold Act, 1894, applicable for the purposes of this Part of this Act as modified and applied thereby.

Rules of the Minister.

For the rules made by the Minister, see Appendix No. I., Vol. II.; "as modified and applied," *i.e.*, by this Act and by the rules, *cf.* s. 140 (a), *inf.*

Provisions where manorial incidents are extinguished on expiration of ten years after the commencement of Act.

140. Where in respect of any enfranchised land or in respect of any other land liable to any heriot, quit rent, chief rent, free rent, or other manorial incident, the manorial incidents affecting the land are by virtue of this Act extinguished upon the expiration of ten years from the commencement of this Act by reason of no compensation agreement having been made or notice given to ascertain the compensation before the expiration of that period, the following provisions shall have effect:—

(a) At any time after the expiration of the said ten years and before the expiration of fifteen years from the commencement of this Act the lord or the tenant may apply to the Minister to determine the amount of compensation to be paid by the tenant to the lord for the extinguishment of the said manorial incidents and upon such application being made the Minister shall proceed to determine and award the amount of the compensation in accordance with the Copyhold Act, 1894, as modified and applied by this Part of this Act in like manner as if the lord and the tenant had in accordance with Part I. of that Act agreed in writing that the amount of compensation should be determined by a single valuer appointed by the Minister: Provided that in assessing the compensation no amount shall be allowed in respect of any rent, fine, relief, heriot or fee, which apart from this Part of this Act would have accrued due and become payable, between the expiration of the said period of ten years and the date of the application:

Extent of s. This s. applies not only to copyhold land, but to any land affected by manorial incidents. It does not apply to "rents, services, and conditions" within s. 133, *sup.* "Award" the amount of the compensation here clearly refers to the certificate: s. 139 (2) (a), *sup.*

Fifteen years limit. Though the ten years period may be extended under s. 138 (1) (ii), there is nothing to authorise the extension of the fifteen years limit, but it is conceived that if an order were made extending the ten years period to sixteen that would automatically extend the period in this s.

After the ten years period has expired then for the next five years there is power to ascertain the compensation, though no allowance is made for rents, &c. accruing after the ten years period. No compensation agreement can be made after the ten years has expired.

"Single valuer": compare s. 139 (2) (c), *sup.*

(b) The annual terminable rentcharge (if any) payable as compensation shall commence from the date of the application (to be mentioned in the

award), and the lord shall not be entitled to any interest in respect of the period between the date of the expiration of the said period of ten years and the date of the application:

"Award" refers to the "certificate": see s. 139 (2) (a); it is used in this sense in the last para. Postponement of rentcharge.

(c) If no such application has been made before the expiration of the said period of fifteen years, no compensation shall be payable in respect of the extinguishment of manorial incidents:

If the tenant fails to give notice within the ten years it will be to the advantage of the lord to apply to the Minister under this s. Final extinction of claims.

(d) The costs and expenses of determining the compensation in any case to which this section applies shall, notwithstanding anything contained in this Part of this Act, and in default of agreement, be borne by the tenant, unless the Minister considers that the conduct of the lord has been unreasonable or that special considerations apply, in either of which cases the Minister may determine by whom and in what proportions, if any, the costs and expenses are to be borne, and in so determining he shall have regard to what would be just, accordingly as nearly as may be to the advantages derived from the extinguishment by the lord and tenant, respectively, or by either of them.

This enacts the general principle as to costs, and, though in terms only applicable where the ten years period has expired, will be the main factor in determining how the costs of compensation agreements are to be borne. Costs.

"Accordingly" is a printer's error for "according."

"Advantages derived by the extinguishment": compare s. 139 (1) (ii), *sup.*

141.—(1) This Part of this Act shall extend to manors or lands vested in His Majesty in right of the Crown, or of the Duchy of Lancaster, or in right of the Duchy of Cornwall or possessions thereof, or in the Duke of Cornwall for the time being, for any estate, whether in possession, reversion or remainder. Application to Crown and Duchy lands.

(2) Nothing contained in this Part of this Act shall extend to or affect any condition, stipulation or restriction imposed by the Commissioners of Works under this Act for the protection of any royal park or garden.

For the powers of the Commissioners of Works to impose restrictions for the protection of the amenities of royal parks and gardens, see s. 137, *sup.* See also s. 134, *sup.*

Application to manors where derivative interests are entered on rolls or take effect at law.

142. In the case of a manor in which the fines are certain, and in which, before the commencement of this Act, it was the practice for copyholders to grant derivative interests to persons who were admitted as copyholders of the manor in respect of those interests, or where by virtue of this Act legal estates derived out of the fee simple are created for giving effect to former equitable interests, this Part of this Act shall apply, subject to the following modifications:—

(a) The derivative interests and the fee simple subject thereto shall be treated separately, and the person entitled to or having power on a sale to dispose of each separate interest shall (save as otherwise provided in this Part of this Act) only be liable to pay compensation for the extinguishment of manorial incidents to the extent to which that interest is thereby affected, and for the purposes of the Copyhold Act, 1894, shall be deemed to be the tenant:

(b) The compensation for the extinguishment of manorial incidents affecting a derivative interest shall in every case be paid in a gross sum.

After the word "copyholders" in line 3 of this s. the words "in fee" were repealed: L. P. (Amend.) A., 1924, 2nd Sch., para. 3 (2); the object of the repeal was to extend the s. to cases where a copyholder for years sub-demised and the underlessee was admitted. "Copyholder in fee": s. 189.

"Legal estates."

"By virtue of this Act": see 12th Sch., also L. P. A., 1925, 1st Sch., Pts. II.—VIII.; "legal estates," *i.e.*, a fee simple, a perpetual rentcharge, a legal easement, or a term of years absolute: L. P. A., 1925, s. 1.

Separate treatment.

The separate treatment prescribed by this s. will involve a multiplication of compensation agreements; the original scheme was to enable the copyholder in fee to effect the extinguishment on behalf of all parties and to give him a right to contribution. This was objected to.

A person "having power on a sale to dispose," see s. 188 (8). "Save as otherwise provided," capital money devolving with settled land, or personalty going with land on trust for sale, will be applicable for the discharge of the gross sum: s. 139 (1) (v), *sup.* No compensation will be payable if the fifteen years have elapsed: s. 140, *sup.*

"To the extent to which that interest" is affected by the extinguishment, for instance, regard will be had to the manorial incidents attaching to each separate interest, which for the purposes of the 13th Sch., Pt. II., para. 3, will be valued separately.

"Tenant."

For the general meaning of "tenant," see s. 143 (1).

Saving of offices of profit from the Crown.

142A. Notwithstanding that, as respects manors belonging to the Crown, all manorial incidents may become extinguished, the acceptance of the office of steward or other principal officer shall be deemed to be an acceptance of an office of profit from the Crown for the pur-

poses of section twenty-five of the Succession to the Crown Act, 1707.

This s. was inserted by the L. P. (Amend.) A., 1924, 2nd Sch. The object is to keep alive the power for members of Parliament to retire by the acceptance of the stewardship of the Chiltern Hundreds, the manor of Northstead, &c. Chiltern Hundreds.

S. 25 of the Succession to the Crown Act, 1707, makes the distinction between an office of profit "from" the Crown and an office (see s. 24) "under" the Crown. 6 Anne, c. 41, s. 25 (revised stat.). 6 Anne, c. 7, s. 26 (Pickering).

143.—(1) Subject to the provisions of this Part of this Act with respect to Crown and Duchy lands, this Part of this Act shall, without prejudice to the general definitions in Part XI. of this Act which when applicable shall apply, be construed as one with the Copyhold Act, 1894: Construction of Part VI.

Provided that the expression "lord" shall, where the context so requires, mean any person having power to effect a compensation agreement in right of the manorial incidents, and for the definition of "tenant" contained in that Act the following definition shall be substituted:—

> "The expression 'tenant' means the person in whom the land enfranchised under Part V. of the Law of Property Act, 1922, is thereby made to vest and the persons deriving title under him, and includes the person entitled to the legal estate in or the possession of any other land subject to manorial incidents, whether or not those incidents have been severed from the manor."

As to Crown and Duchy lands, see s. 141, *sup.* For the general definitions, see s. 188; for those specially applicable to Part V., see s. 189, *inf.*

"In right of the manorial incidents," thus any person who on a sale (s. 138 (5) (i)) would be able to make a title to the manorial incidents is treated as the lord: see next sub-s. This extension of the definition (Cop. A., 1894, s. 94) of "lord" is essential, because there may be no manor to which the incidents are annexed. This Part of this Act extends to the extinguishment of manorial incidents affecting land which has always been freehold: see the words "any other land" in s. 138 (1), *sup.* As to "manor": next sub-s. "Lord." "Manor."

This definition of "tenant" supersedes the definition in Cop. A., 1894, s. 94. It includes the "estate owner" (L. P. A., 1925, s. 1) of the land, not necessarily parcel of a manor, affected by the manorial incidents. Here again the person having power to sell the land affected by the incidents is treated as the tenant: s. 138 (5) (i), *sup.* A person entitled to a derivative interest is only "the tenant" for the purposes of that interest: s. 142, *sup.* He cannot enter into a compensation agreement or serve a notice in regard to other interests in the land. "Tenant."

"Is thereby made to vest," see 12th Sch., para. (8), as amended by L. P. (Amend.) A., 1924, 2nd Sch.; also L. P. A., 1925, 1st Sch.; "land" in that Act (s. 205 (1) (ix)) includes manors, incorporeal hereditaments and benefits derived from land, hence manorial incidents are included and are vested in the person entitled thereto by the 1st Sch., Pts. II.—VIII. Vesting provisions.

(2) Where the right to any manorial incidents is not vested in the lord of the manor, but in some other person, the provisions of this Part of this Act shall in relation to such manorial incidents have effect as if the person who on a sale would be able to dispose of those manorial incidents were substituted for the lord, and the manorial incidents were substituted for the manor.

See note to last sub-s., tit. "lord."

(3) The provisions of section sixty-seven of the Conveyancing Act, 1881, shall apply to all notices authorised to be given under this Part of this Act to which section fifty-seven of the Copyhold Act, 1894, does not apply.

Notices.

C. A., 1881, s. 67, has been reproduced by L. P. A., 1925, s. 196; whether the notice is given under that s. or Cop. A., 1894, s. 57, it must be in writing, and may in either case be sent by registered letter. Under s. 57 it may be affixed to the premises if there is no person to whom it may be delivered.

(4) All decisions or orders of the Minister made under this Part of this Act shall (subject only to such appeal to the court as may be prescribed by rules of court) be final.

Appeals from the Minister.

See R. S. C. (Law of Property and other Acts), 1925, Ord. LIVD, Appendix No. XI., Vol. II.

General Provisions.

Power to inspect Court Rolls.

144. Any person interested in enfranchised land may on payment of the fee prescribed by the Lord Chancellor, inspect at any reasonable hour any Court Rolls of the manor of which the land was held; and Court Rolls shall (whether before or after the manorial incidents have been extinguished), for the purposes of section fourteen of the Evidence Act, 1851, be deemed to be documents of such a public nature as to be admissible in evidence on their mere production from the proper custody.

14 & 15 Vict. c. 99.

See also Cop. A., 1894, s. 62. This power of inspection is new, but an acknowledgment of the right to production should generally be taken: *cf. Re Agg-Gardner*, 1884, 25 Ch. D. 600. For the meaning of "enfranchised land": s. 128 (1), *sup.*

Evidence as respects court rolls.

As to the rights of the tenants, before enfranchisement, to the production of court rolls for evidencing their titles, see *Warriner* v. *Giles*, 1734, 2 Str. 955; *R.* v. *Tower*, 1815, 4 M. & S. 162; *R.* v. *Shelley*, 1789, 3 T. R. 141; *Warrick* v. *Queen's College, Oxford*, 1867, L. R. 3 Eq. 683; *Beaumont* v. *Jeffery*, 1925, 1 Ch. 1, 8; R. S. C. Ord. 31, r. 19; 8 Hals. L. of E. 16.

After enfranchisement the compensation agreement is a good root of title as respects the lord's claims: L. P. A., 1925, s. 44 (7); see also 12th Sch., para. (1) (e), *inf.*

"From the proper custody": see next s.

144A.—(1) All manorial documents shall be under the charge and superintendence of the Master of the Rolls. Manorial documents.

This s. was inserted by the L. P. (Amend.) A., 1924, s. 2 and 2nd Sch., *inf.* It negatives the right to dispose of court rolls to a stranger which was recognised in *Beaumont* v. *Jeffery,* 1925, 1 Ch. 1.

(2) Save as hereinafter provided, manorial documents shall remain in the possession or under the control of the lord for the time being of the manor to which the same relate and he shall not be entitled to destroy or damage wilfully such documents.

For the meaning of "lord" in this s., see sub-s. (6); the lord and steward have limited rights to custody: *Re Jennings,* 1903, 1 Ch. 906. See also Cop. A., 1894, s. 64. *Primâ facie* "lord of the manor" has its ordinary meaning, but this s. will bind a mere purchaser or owner of the documents. "Lord."

(3) The Master of the Rolls may from time to time make such enquiries as he shall think fit for the purpose of ascertaining that any manorial documents are in the proper custody, and are being properly preserved, and the lord of the manor to which such documents relate, or the governing body of any public library, or museum or historical or antiquarian society, to which the same may have been transferred, as hereinafter provided, shall furnish the Master of the Rolls with all such information with respect thereto as he may require.

(4) The Master of the Rolls may direct that any manorial documents which, in his opinion, are not being properly preserved, or which he is requested by the lord of a manor to deal with under this subsection, shall be transferred to the Public Record Office, or to any public library, or museum or historical or antiquarian society, which may be willing to receive the same, and if the same shall be transferred to any public library, or museum or historical or antiquarian society, the governing body thereof shall thereafter have the custody thereof and shall be responsible for the proper preservation and indexing thereof.

(5) Nothing contained in this section shall prejudice or affect the right of any person to the production and delivery of copies of any manorial documents or to have the same kept in a proper state of preservation; in particular the lord of the manor shall remain entitled to require the same to be produced to him, or in accordance with his directions, free of any cost.

As to production and delivery of copies, see note to last s. and Cop. A., 1894, s. 64 (3). The lord will require the documents until all the manorial Production.

incidents are extinguished, and thereafter to prove customs in regard to fairs and franchises.

(6) In this section "manorial documents" mean court rolls, surveys, maps, terriers, documents and books of every description relating to the boundaries, franchises, wastes, customs or courts of a manor, but do not include the deeds and other instruments required for evidencing the title to a manor; "manor" includes a lordship and a reputed lordship; and "lord of the manor" includes any person entitled to manorial documents.

Title deeds.

Title deeds are required in connexion with the demesne and waste lands held by the lord.

(7) The Master of the Rolls may make rules for giving effect to this section, and may revoke or vary any such rules.

See Appendix No. I., Vol. II., for these rules.

Part VII.

Provisions respecting Leaseholds.

Conversion of Perpetually Renewable Leaseholds into Long Terms.

Conversion of perpetually renewable leaseholds.

145. For the purpose of converting perpetually renewable leases and underleases (not being an interest in perpetually renewable copyhold land enfranchised by Part V. of this Act, but including a perpetually renewable underlease derived out of an interest in perpetually renewable copyhold land) into long terms, for preventing the creation of perpetually renewable leasehold interests and for providing for the interests of the persons affected, the provisions contained in the Fifteenth Schedule to this Act shall have effect.

Perpetually renewable copyholds.

Perpetually renewable copyholds are enfranchised and the tenant takes the fee simple under s. 135, *sup.* Thus the 15th Sch. is confined to leasehold interests, the copyholder will obtain the fee simple, while the underlessee will obtain a two thousand years term.

Leases for lives, &c.

As to leases for lives or terminable with life or marriage being converted into ninety years terms, see L. P. A., 1925, s. 149 (6), replacing para. 7 (3) of the 15th Sch.

General Provisions.

Abolition of *interesse termini* and as to reversionary leases.

146. This s. has been replaced by L. P. A., 1925, s. 149, *inf.*

Parts VIII.—X. were repealed before they took effect.

Part XI.

General Provisions.

General definitions and jurisdiction of the court.

188. In this Act unless a contrary intention appears—

(1) "Land" includes land of any tenure, and mines

and minerals, buildings or parts (whether the division is horizontal, vertical or otherwise) of buildings and other corporeal hereditaments; also a manor, an advowson, and a rent and other incorporeal hereditaments, and an easement, right, privilege, or benefit in, over, or derived from land; but not an undivided share in land; and "mines and minerals" include any strata or seam of minerals or substances in or under any land, and powers of working and getting the same but not an undivided share thereof;

This definition corresponds to L. P. A., 1925, s. 205 (1) (ix): see note thereto. "Land."

"Mines and minerals."

(2) "Registered land" means land registered under the Land Transfer Acts;

See L. P. A., 1925, s. 205 (1) (xxii). The L. T. A's. are now replaced by the L. R. A., 1925. "Registered land."

(3) "Possession" includes receipt of rents and profits or the right to receive the same, if any; and "income" includes rents and profits;

See L. P. A., 1925, s. 205 (1) (xix). "Possession." "Income."

(4) "Will" includes codicil;

(5) "Rent" includes a rent service or a rentcharge, or other rent, toll, duty, royalty, or annual or periodical payment, in money, or money's worth, issuing out of or charged upon land, but does not include mortgage interest;

See L. P. A., 1925, s. 205 (1) (xxiii). "Rent."

(6) "Court" means the High Court of Justice, and also the Court of Chancery of the County Palatine of Lancaster or Durham, or the county court, where those courts respectively have jurisdiction; and all matters within the jurisdiction of the High Court under this Act shall, subject to the Acts regulating the court, be assigned to the Chancery Division of the court; and every application to the court under this Act shall, except where it is otherwise expressed and subject to any rules of court to the contrary, be by summons at chambers, and the court shall have full power and discretion to make such order as it thinks fit respecting the costs, charges and expenses of all or any of the parties to any application;

See L. P. A., 1925, s. 203 (2)—(5). "Court" and jurisdiction.

(7) "Property" includes any thing in action, and any interest in real or personal property, and "notice" includes constructive notice;

"Property." "Notice." See L. P. A., 1925, s. 205 (1) (xx) and (xvii).

(8) In reference to any estate, right, or interest the "person able to dispose thereof on a sale" means the person (including a mortgagee whose power of sale has arisen) who is able on a sale to convey the same to a purchaser free from incumbrances and includes the other persons (if any) whose concurrence or consent, for the purpose of giving a receipt for the purchase money or conveying any estate or interest or consenting to the sale, is necessary for the completion of the sale;

"Person able to dispose thereof on a sale." This definition relates to compensation agreements; the object is to show who can enter into the agreement as lord or tenant respectively. It also relates to the redemption of compensation rentcharges.

(9) "The Land Transfer Acts" means the Land Transfer Acts, 1875 and 1897, and includes any Act consolidating or amending the same, including this Act; and "Land Registrar" means the registrar under those Acts;

The L. T. A's., as amended, are now replaced by the L. R. A., 1925.

(10) "Gazette" means the London Gazette;

(11) "The Limitation Acts" means the Real Property Limitation Acts, 1833, 1837, and 1874; and the "Statutes of Distribution" mean sections five, six, and seven of chapter ten of the Act passed in the twenty-second and twenty-third years of the reign of King Charles the Second (the Statute of Distribution), sections five and seven of chapter seventeen of the Act passed in the first year of the reign of King James the Second, and the Executors Act, 1830;

"Limitation Acts." See L. P. A., s. 205 (1) (xii). The definition of "Statutes of Distribution" is no longer required for the purposes of this Act; it related to matters now enacted in the Ad. of E. A., 1925, s. 50 (2).

(12) A "term of years absolute" means a term of years (taking effect either in possession or in reversion, but if created after the commence-

ment of this Act then taking effect in possession within twenty-one years after the creation thereof where so required by this Act) with or without impeachment for waste, subject or not to another legal estate and either certain or liable to determination by notice, re-entry, operation of law, or by a provision for cesser on redemption, or in any other event (other than the dropping of a life, or the determination of a determinable life interest), but does not include any term of years determinable with life or lives or with the cesser of a determinable life interest; and in this definition the expression "term of years" includes a term for less than a year, or for a year or years and a fraction of a year or from year to year;

See L. P. A., 1925, s. 205 (1) (xxvii).

"Term of years absolute" and "term of years."

(13) "Legal estates" mean the estates and interests in land (subsisting or created at law) which are by this Act authorised to subsist or to be created at law; "equitable interests" mean all the other interests and charges in or over land or in the proceeds of sale thereof; an equitable interest "capable of subsisting at law" means such as could validly subsist or be created as a legal estate under this Act; references to an equitable interest or power being protected by a settlement include every case where, by reason of the subsistence of an equitable interest or power, the land remains settled land or is deemed to be settled land; and "estate owner" means the owner of a legal estate, but an infant is not capable of being an estate owner;

See L. P. A., 1925, s. 1, as to legal estates, equitable interests and estate owners; also s. 205 (1) (v) and (x); and as to "capable of subsisting at law," *ib.* (x). References to interests or powers "being protected by a settlement" have become obsolete.

"Legal estates," "equitable interests," "capable of subsisting at law" and "estate owner."

(14) "Legal powers" mean the powers vested in a chargee by way of legal mortgage or in an estate owner under which a legal estate can be transferred or created; and "equitable powers" mean all the powers (under which equitable interests or powers only can be transferred or

created) in or over land which are not legal powers;

"Legal powers." See L. P. A., 1925, ss. 1 (7) (8), 7—9, 205 (1) (xi).

"Equitable powers."

(15) "Instrument" does not include a statute, unless the statute creates a settlement;

"Instrument." See L. P. A., 1925, s. 205 (1) (viii).

(16) "Conveyance" includes a mortgage, charge by way of legal mortgage, lease, assent, vesting declaration, vesting instrument, disclaimer, release and every other assurance of property or of an interest therein by any instrument, except a will, and "convey" has a corresponding meaning;

"Conveyance." See L. P. A., 1925, s. 205 (1) (ii).

"Convey."

(17) "Disposition" includes a "conveyance" also a devise bequest and an appointment of property contained in a will which are to take effect in equity only, and "dispose of" has a corresponding meaning;

"Disposition." See L. P. A., 1925, s. 205 (1) (ii).

"Dispose of."

(18) "Personal representative" means the executor, original or by representation, or administrator for the time being of a deceased person, and as regards any liability for the payment of death duties includes any person who takes possession of or intermeddles with the property of a deceased person without the authority of the personal representatives or the court;

"Personal representative." See L. P. A., 1925, s. 205 (1) (xviii).

(19) A "defective" includes every person affected by the provisions of section one hundred and sixteen of the Lunacy Act, 1890, as extended by section sixty-four of the Mental Deficiency Act, 1913, and for whose benefit a receiver has been appointed;

53 Vict. c. 5.

3 & 4 Geo. 5, c. 28.

"Defective." See L. P. A., 1925, s. 205 (1) (xiii).

(20) "Death duty" means estate duty, succession duty, legacy duty, and every other duty leviable or payable on any death which occurs after the commencement of this Act;

"Death duty." See L. P. A., 1925, s. 205 (1) (iv).

(21) "Tenant for life of full age" includes a person of full age beneficially interested in the settled land, who has the powers of a tenant for life under the Settled Land Acts;

"Tenant for life of full age."

See S. L. A., 1925, s. 19 (1); also s. 117 (1) (xxviii).

(22) "Statutory owner" means the trustees of the settlement or other persons who, during a minority, or at any other time when there is no tenant for life of full age, have the powers of a tenant for life under the Settled Land Acts, but does not include the trustees of the settlement, where by virtue of an order of the court or otherwise the trustees have power to convey the settled land in the name of the tenant for life of full age;

"Statutory owner."

See S. L. A., 1925, ss. 23, 26, 117 (1) (xxvi).

(23) "Settled land" has the same meaning as in the Settled Land Acts, and where the settlement consists of more than one instrument, or where any estate, interest, power or charge is by this Act made to take effect as if limited or protected by the settlement, it includes every estate or interest comprised in such compound settlement;

"Settled land."

See S. L. A., 1925, ss. 2, 117 (1) (xxiv).

(24) "Settlement" has the same meaning as in the Settled Land Acts, and includes an instrument which under the Settled Land Acts is deemed to be a settlement, and a settlement which is deemed to have been made by any person or to be subsisting for the purposes of those Acts; and where any such compound settlement as aforesaid exists it includes that settlement; but it only includes a vesting instrument for giving effect thereto where the context so requires;

"Settlement."

See S. L. A., 1925, ss. 1, 117 (1) (xxiv).

(25) "The trustees of the settlement" has the same meaning as in the Settled Land Acts, and where any such compound settlement exists it includes the trustees of that settlement;

"Trustees of the settlement."

See S. L. A., 1925, ss. 30—33, 117 (1) (xxiv).

(26) "The Settled Land Acts" means the Settled Land Acts, 1882 to 1890, and any Act consolidating or amending the same, including this Act;

The S. L. A's., as amended, are reproduced by S. L. A., 1925.

(27) "Purchaser" means a purchaser in good faith for money or money's worth and includes a lessee, mortgagee or other person who in good faith acquires an interest in property for money or money's worth; and in reference to a legal estate includes a chargee by way of legal mortgage;

"Purchaser." See L. P. A., 1925, s. 205 (1) (xxi).

(28) "Mortgagor," "mortgagee," and "mortgage deed" have the same meanings as in the Conveyancing Act, 1881, "mortgage" includes "mortgage deed"; "charge by way of legal mortgage" means a mortgage created by charge under which, by virtue of this Act, the mortgagee is to be treated as an estate owner in like manner as if a mortgage term by demise or sub-demise were vested in him; and "right of redemption" includes an option to re-purchase only if the option in effect creates a right of redemption; and "mortgagee" includes a chargee by way of legal mortgage;

"Mortgagor," &c. See L. P. A., s. 205 (1) (xvi).

(29) In relation to settled land, "vesting deed" or "vesting order" means the instrument whereby the land is conveyed or vested; "vesting assent" means the instrument whereby a personal representative, after the death of a tenant for life of full age or other sole surviving statutory owner, vests the land in the successor in title or other person entitled; "vesting instrument" means a vesting deed, assent or order; and "trust deed" means the instrument or instruments whereby the trusts of the settled land are declared;

"Vesting deed," &c. See S. L. A., 1925, ss. 4—13, 117 (1) (xxxi).

(30) "Trust for sale," in relation to land, means an immediate binding trust for sale, with or without a power at discretion to postpone the sale;

"trustees for sale" mean the persons (including a personal representative) holding land on trust for sale; and "full power to postpone a sale" means power to postpone in the exercise of a discretion; and "trust corporation" means the public trustee or a corporation either appointed by the court in any particular case to be a trustee or entitled by rules made under subsection (3) of section four of the Public Trustee Act, 1906, to act as custodian trustee. 6 Edw. 7, c. 55.

See L. P. A., 1925, ss. 2, 23—33, 205 (1) (xxviii), (xxix). "Trust for sale," "trustees for sale," "power to postpone sale" and "trust corporation."

(31) "Minister" means the Minister of Agriculture and Fisheries;

(32) References to a child or issue living at the death of any person include a child or issue en ventre sa mère at the death.

See Ad. of E. A., 1925, s. 55 (2). *En ventre sa mère.*

189. In this Act, and in particular in Part V., unless the context otherwise requires,— Special definitions applicable to Part V.

"Copyhold land" includes—

(a) Land commonly known as customary land or customary freehold land where the freehold is in the lord and not in the customary tenant; and

(b) Land of copyhold tenure held for life or lives or for years, whether or not determinable with life, where the tenant has by custom a perpetual right of renewal, subject or not to the fulfilment of any conditions;

(c) Land held in free tenure for life or lives or for years, whether or not determinable with life, (but subject to custom) where the tenant has by custom a perpetual right of renewal, subject or not to the fulfilment of any conditions;

See Cruise, Dig., vol. i., tit. xc., 1, 4th ed. Para. (a) includes true copyholds; paras. (b) and (c) relate to s. 135. "Copyhold land."

"Copyholder in fee" means the person who is admitted in respect of the inheritance;

"Tenant" means the person in whom the enfran-

chised land is vested by virtue of this Act, and includes the persons deriving title under him;

See s. 143 (1), *sup.*; 12th Sch. as amended; also L. P. A., 1925, 1st Sch., Pts. II. to VIII.

"Prescribed" means prescribed by regulations made by the Minister;

Regulations made by the Minister.

See Appendix No. I., Vol. II.

Other expressions have the same meaning in Part V. of this Act as in the Copyhold Act, 1894, but without prejudice, where applicable, to the general definitions in this Act.

These definitions are dealt with under the ss. to which they relate.

Special definitions applicable to Part VII.

190. In Part VII. of this Act—

(i) "Lessor" means the person for the time being entitled in reversion expectant on the interest demised, or, where the reversion is encumbered, the person having power to accept a surrender of the lease, or underlease;

"Lessor."

For power to accept surrenders of leases, see L. P. A., 1925, s. 100. The "lessor" in this definition includes an "underlessor."

(ii) "Lessee" and "underlessee" include the persons respectively deriving title under them;

(iii) "A perpetually renewable lease or underlease" means a lease or underlease the holder of which is entitled to enforce (whether or not subject to the fulfilment of any condition) the perpetual renewal thereof, and includes a lease or underlease for a life or lives or for a term of years, whether determinable with life or lives or not, which is perpetually renewable as aforesaid, but does not include copyhold land held for a life or lives or for years, whether or not determinable with life, where the tenant had before the commencement of this Act a right of perpetual renewal subject or not to the fulfilment of any condition;

Copyholds excluded

As to the copyholds excluded from the operation of the 15th Sch., see s. 135.

(iv) "Underlease," unless the context otherwise requires, includes a subterm created out of a derivative leasehold interest.

191.—(1) This Act may be cited as the Law of Property Act, 1922. Short title; commencement; extent.

(2) This Act shall come into operation on the *first day of January, one thousand nine hundred and twenty-five.*

By the L. P. (Postponement) A., 1924, the commencement of this Act was postponed to the 1st January, 1926.

(3) This Act (including the repeals therein) shall not extend to Scotland or Ireland.

SCHEDULES.

Schedules I. to XI. inclusive were repealed before they took effect.

TWELFTH SCHEDULE. Section 128.

NOTE.—*The provisions in this Sch. are printed as amended by the L. P. (Amend.) A., 1924, s. 2 and 2nd Sch.*

EFFECT OF ENFRANCHISEMENT.

(1) The following provisions shall, from and after the commencement of this Act, apply with respect to the enfranchised land:—

(a) The land shall be freehold land and be free from liability for forfeiture for the conveyance or attempted conveyance of an estate of freehold in the land, or for alienation without licence, whether by way of sale, lease, mortgage or otherwise:

This Sch. does not apply to leaseholds within s. 133. As to forfeitures, *cf.* s. 128 (2). Conversion into freehold.

(b) The tenant shall be free from the customary suits and services and from liability to do fealty:

A court baron is not a customary court, but is held by the freehold tenants; it remains unaffected: see "general words" in L. P. A., 1925, s. 62 (3). As to courts leet and customary courts, certain jurisdiction is transferred to "the court": see para. (6), *inf.* The only services preserved are those in s. 136. The "tenant": see ss. 143 (1) and 189. Suits, services, fealty.

(c) In place of the lord's right to escheat the Crown or the Duchy of Lancaster or the Duke of Corn-

wall (as the case may require) may become entitled to the land as bona vacantia under the provisions of Part VIII. of this Act:

Escheat.

See also Ad. of E. A., 1925, ss. 45 (1) (d), 46 (1) (vi). Part VIII. of this Act is now replaced by the Ad. of E. A., 1925.

(d) The land shall not be subject to the custom of borough English, or of gavelkind, or to any other customary mode of descent, or to any custom relating to dower or freebench or tenancy by the curtesy, or to any other custom whatsoever, but shall be governed as to descent on death and intestacy or partial intestacy and devolution on death by the provisions of Parts VIII. and IX. of this Act:

Provided that nothing in this paragraph with respect to dower, freebench, or curtesy shall apply to any person married before the commencement of this Act, unless in the case of dower or freebench the husband dies after the commencement of this Act, and in the case of curtesy, the wife dies after such commencement; but where a right to freebench has attached before the commencement of this Act which cannot be barred by a testamentary or other disposition made by the husband, then such right shall, unless released, remain in force in equity:

Abolition of special customs of descent.

These special customs of descent are abolished generally in regard to land and a personal inheritance by Ad. of E. A., 1925, s. 45.

Parts VIII. and IX. have been repealed and are now reproduced by Parts IV. and I. to III. of the Ad. of E. A., 1925.

No unbarrable freebench.

It was claimed that, in certain manors, freebench, when once it attached, could not be barred by a disposition by the husband. This claim appears to be wanting in proper foundation: Wills A., 1837, s. 3; *Lacey* v. *Hill*, 1875, L. R. 19 Eq. 346; *Re Thomas*, 1886, 34 Ch. D. 166; hence the last sentence of the proviso will be inoperative.

Widow of a lunatic.

But the widow of a lunatic living and of full age on 1st January, 1926, may become entitled to dower under Ad. of E. A., 1925, s. 51 (2).

(e) The land shall (subject to the provisions of Part I. of this Act and of this Schedule) be held under the same title as that under which it was held at the commencement of this Act, and shall not be subject to any estate, right, charge, or interest affecting the manor:

Titles to

The provisions of Part I. of this Act referred to are now replaced by the

L. P. A., 1925, 1st Sch., Pts. II. to VIII., and the S. L. A., 1925, 2nd Sch., which vest the legal estate in the proper persons.

enfranchised land maintained subject to the legal estates therein being vested in the proper persons.

(f) Every mortgage of the copyhold estate in the land shall become a mortgage of the land for a term of years absolute in accordance with the provisions of Part I. of this Act and accordingly:

(i) Where at the commencement of this Act a mortgage of the customary estate of inheritance in copyhold land effected by surrender, with or without admission, or by a covenant to surrender, is subsisting, then the mortgagee shall, by virtue of this Act, acquire a legal term of years absolute in the enfranchised land comprised in his mortgage subject to a proviso for cesser corresponding to the right of redemption subsisting under the mortgage;

(ii) Where at the commencement of this Act the copyhold land has been surrendered to the use of a mortgagee, without notice of a previous covenant to surrender contained in another mortgage, that mortgagee shall not be deemed to be a subsequent incumbrancer as respects the last-mentioned mortgage.

In this paragraph the expression "surrender" includes any other disposition which, when entered on the court rolls, operated as a surrender to the use of any person.

Copyhold mortgages converted into mortgages by demise or subdemise.

The provisions of Part I. of this Act as to mortgages are now replaced by L. P. A., 1925, 1st Sch., Pts. VII. and VIII., and see s. 207 (c). Whether or not a land charge should be registered to protect a mortgage depends on whether the mortgagee has the documents of title.

This paragraph relates to copyhold mortgages whether legal or equitable. Mere charges remain unaffected: see para. (e), *sup.*; also L. P. A., 1925, s. 13, as to mortgages by deposit.

Mortgagee under a conditional surrender without notice of a previous charge.

Where a conditional surrender is entered on the rolls the mortgagee obtains an inchoate legal interest: Jarm. on Wills, 6th ed., p. 70; *Wainewright* v. *Elwell*, 1816, 1 Madd. 627; *Phillips* v. *P.*, 1832, 1 Myl. & K. 664; hence when he has no notice of a prior covenant to surrender, which only creates an equity, he acquires priority: *Oxwick* v. *Plumer*, 1708, 5 Bac. Abr., 6th ed., Mortg. E. 3, p. 43. Para. (ii) was required as both mortgages are converted into legal mortgages.

Dispositions operating as surrenders.

A conveyance of copyholds by a tenant for life under S. L. A., 1882, s. 20, operated as a surrender to the use of a purchaser. Also a bargain and sale by executors under a power of appointment operated in a similar way, though the executors had not been admitted.

(2) The enfranchisement shall not, except as in this Act mentioned, affect the rights or interests of any person in the enfranchised land under a will, settlement, mortgage, or otherwise by purchase, but those rights and interests shall (subject to the provisions of Part I. of

this Act) continue to attach upon the land enfranchised in the same way as nearly as may be as if the freehold had been comprised in the instrument or disposition under which that person claims, and accordingly the enfranchised land shall (save as expressly provided by this Act) be subject to the same or corresponding trusts, powers, executory limitations over, rights and equities (if any) and to the same or corresponding incumbrances and obligations as affected the land immediately before the commencement of this Act:

Provided that (in the case of manors in which at the commencement of this Act it was the practice for copyholders in fee to grant derivative interests to persons admitted as copyholders of the manor in respect of those interests) the provisions of this paragraph as to the attachment of such rights and interests as aforesaid shall apply only to the estate of the copyholder in fee, but the enfranchisement shall enure for the benefit of the persons entitled to such derivative interests in manner hereinafter provided.

Preservation of equities and incumbrances subject to variations.

The equities and incumbrances are preserved subject to the provisions of the L. P. A., 1925, and the S. L. A., 1925, enabling equitable interests and powers to be overreached by virtue of a trust for sale or a settlement. Under para. 8, proviso (ii), *inf.*, a fee simple conditional on the birth of issue, arising from an attempt, in manors where there was no custom to entail, to create an estate tail, is converted into an equitable entailed interest. For the meaning of an "entailed interest," see L. P. A., 1925, s. 130 (1) (7), replacing L. P. A., 1922, s. 17 (1) (6). Again, tenancies by entireties are converted into joint tenancies, without prejudice to beneficial interests: L. P. A., 1925, 1st Sch., Pt. VI. Joint tenants, save in the case of settled land, hold on trust for sale: *ib.*, s. 36; and where the land is held in undivided shares, it is subjected to a trust for sale: L. P. A., 1925, 1st Sch., Pts. IV. and V.

Derivative interests subsisting at law.

Where a copyholder has been admitted to a term of years absolute (see s. 133, *sup.*), or to a perpetual rentcharge or rentcharge for a term of years absolute, or to an easement or right for an estate in fee simple or term of years absolute, there is no need to create a trust, for the interest will be legal. But if the term, rentcharge or easement is itself subject to a trust, that trust will not be affected. Legal interests converted into equitable interests do not fail: L. P. A., 1925, 1st Sch., Pt. I. The proviso to this para. was inserted to prevent equities which affected the estate of the copyholder in fee from attaching to the derivative interests unaffected thereby: *cf.* para. (e), *sup.* "Copyholder in fee": s. 189.

"Shall enure . . . in manner hereinafter provided": see (8) (c), *inf.*

(3) Where the land is, at the commencement or by virtue of this Act, subject to any subsisting lease or demise, for a term of years absolute, the freehold into which the copyhold estate is converted shall be the reversion immediately expectant on the lease or demise, and the benefit of the rents and services reserved and

made payable on, and the conditions in, or in respect of, the lease or demise, shall be incident and annexed to the reversion, and the burden of the covenants or agreements, expressed or implied, on the part of the lessor and lessee respectively shall run with the reversion and with the land respectively, and the enfranchisement shall not affect any right of distress, entry, or action accruing in respect of the lease or demise, and any lease or demise, otherwise than for a term of years absolute, shall take effect in equity only:

Provided that (in the case of manors in which it was the practice for copyholders in fee to grant derivative interests to persons admitted as copyholders of the manor in respect of those interests) this paragraph shall apply only in respect of leases or demises taking effect out of the estate of the copyholder in fee.

Saving of leases and rights of reversioner.

Leases are created "by virtue of this Act" where the copyhold interest was for lives and is converted into a term of ninety years terminable by notice: see s. 133, *sup.*, and notes thereto; there the lord becomes the reversioner; see also L. P. A., 1925, ss. 149 (6), 207 (c).

A perpetually renewable copyhold interest is converted into a fee simple by s. 135, and is not within this para.

The estate owner of the enfranchised land becomes the reversioner in respect of all leases for terms of years absolute derived out of the interest of the copyholder in fee.

Leases created out of derivative interests.

Where the term is created out of a derivative legal estate the estate owner of the derivative estate remains the reversioner. A legal term can only be created out of a legal estate, save under a statutory power of leasing enabling the lessor to bind the interest of a third party: see L. P. A., 1925, ss. 8 and 99. As to the vesting of legal reversions and terms: L. P. A., 1925, 1st Sch., Pt. II., paras. 3, 4, 7 (c); S. L. A., 1925, 2nd Sch.

(4) An enfranchisement by virtue of this Act shall not deprive a tenant of any commonable right to which he is entitled in respect of the enfranchised land, but where any such right exists in respect of any land at the commencement of this Act it shall continue attached to the land notwithstanding that the land has become freehold.

Saving of commonable rights.

This para. follows Cop. A., 1894, s. 22. Where an enfranchisement was effected at common law the rights over the waste were lost unless the enfranchisement deed contained a re-grant: 1 Watkins, 4th ed., 451; Scriven, 7th ed., 329.

(5) An enfranchisement by virtue of this Act of any land (including any mines and minerals hereinafter mentioned) shall not affect any right of the lord or tenant in or to any mines, minerals, limestone, lime, clay, stone, gravel, pits, or quarries, whether in or under the enfran-

chised land or not, or any right of entry, right of way and search, or other easement or privilege of the lord or tenant in, on, through, over, or under any land, or any powers which in respect of property in the soil might but for the enfranchisement have been exercised for the purpose of enabling the lord or tenant, their or his agents, workmen, or assigns, more effectually to search for, win, and work any mines, minerals, pits, or quarries, or to remove and carry away any minerals, limestone, lime, stones, clay, gravel, or other substances had or gotten therefrom, or the rights, franchises, royalties, or privileges of the lord in respect of any fairs, markets, rights of chase or warren, piscaries, or other rights of hunting, shooting, fishing, fowling, or otherwise taking game, fish, or fowl:

Provided that the owner of the enfranchised land shall, notwithstanding any reservation of mines or minerals in this Act (but without prejudice to the rights to any mines or minerals, or the right to work or carry away the same), have full power to disturb or remove the soil so far as is necessary or convenient for the purpose of making roads or drains or erecting buildings or obtaining water on the land.

Saving to lord or tenant of his mineral rights.

The right to minerals usually belongs to the lord, for copyhold tenure originated as a tenancy at will, and the tenant had no right to commit waste; the possession is in the tenant and the reversion in the lord, hence neither could, independently of special custom, work the minerals: 1 Watkins, 4th ed., 404—5; 8 Hals. L. of E., 22—24. In some manors in South Wales the tenant has a right to work without licence from the lord. As to the acquisition of rights to work minerals, see Mines (Working Facilities and Support) A., 1923. Pt. I.

Franchises, royalties, fairs, markets and sporting rights.

The reservation of mineral rights, franchises, &c. follows the Cop. A., 1894, s. 23. For "mines and minerals": s. 188 (1), *sup.*

By a compensation agreement the lord's rights may be acquired by the tenant: s. 138 (12).

(6) An enfranchisement by virtue of this Act shall not affect any liability subsisting at the commencement of this Act (whether arising by virtue of a court leet regulation or otherwise) for the construction maintenance cleansing or repair of any dykes, ditches, canals, sea or river walls, piles, bridges, levels, ways and other works required for the protection or general benefit of any land within a manor or for abating nuisances therein; and any person interested in enforcing the liability may apply to the court to ascertain or apportion the liability and to charge the same upon or against the land or any interest therein; and the court may make

such order as it thinks fit; and the charge when made by the order shall be deemed to be a land charge within the meaning of the Land Charges Registration and Searches Act, 1888 (as amended by any subsequent enactment), and may be registered accordingly; and, in addition, the jurisdiction of any court leet, customary or other court, in reference to the matter is hereby transferred to the court.

51 & 52 Vict. c. 51.

The obligation to register the charge as a land charge under L. C. A., 1925, s. 10, will afford the requisite protection to a purchaser.

For the "court," see s. 188 (6). As to courts leet, see 9 Hals. L. of E., 215.

Liability for maintenance of dykes, &c.

Transfer of jurisdiction to the court.

(7) A right preserved to the lord by virtue of this schedule shall not for the purposes of Part VI. of this Act be deemed to be a manorial incident unless it is otherwise agreed.

Thus the lord, whether by notice to determine the amount of compensation, or the expiration of the ten years period, will not be deprived of his mineral rights, franchises, sporting rights, &c., though these can be dealt with by a compensation agreement.

Rights of lord not to be affected without his consent.

(8) On the enfranchisement of any land by virtue of this Act—

(a) If there is a copyholder in fee (not being a mortgagee) the freehold estate in fee simple shall vest (subject as provided in this schedule) in that person:

This para. is printed as amended by the L. P. (Amend.) A., 1924, 2nd Sch., para. 4.

Mortgagees take terms or sub-terms under para. (1) (f), *sup.*; see also L. P. A., 1925, 1st Sch., Pts. VII. and VIII.

In whom the enfranchised land vests.

For meaning of "copyholder in fee," see s. 189. He is the person who was admitted in respect of the inheritance. If he is the beneficial owner, or trustee for sale, or personal representative as respects the fee simple, he will take the fee simple, subject or not to any mortgage term. But if the land is settled land, then the tenant for life of full age or statutory owner will take the fee simple. "Subject as provided": see para. (1) (f), *sup.*, and the rest of para. (8), *inf.*

"Copyholder in fee."

So far as this Sch. (if at all) conflicts with L. P. A., 1925, 1st Sch., Pts. II. to VIII., and S. L. A., 1925, 2nd Sch., those Schedules will prevail: see L. P. A., 1925, s. 202.

The vesting provisions in L. P. A., 1925, and S. L. A., 1925, prevail in regard to legal estates.

(b) If there is no copyholder in fee the freehold estate in fee simple shall (subject as provided in this schedule) vest in the person who immediately before the commencement of this Act had the best right to be admitted as copyholder in fee, otherwise than as mortgagee, but such person shall (save as hereinafter provided) be personally liable to pay the fines and fees which

would have been payable by him on admittance; and if the last person who was admitted as copyholder in fee (being a trustee) has died before the commencement of this Act (whether or not having disposed of the land by will), his personal representative, if any, shall be deemed to have had a better right to be admitted than the devisee or customary heir:

"Persons having the best right to be admitted."

The land will not finally vest in the "person having the best right to be admitted" unless that right brings him, either by beneficial ownership or otherwise, within the class of persons who are to take the fee simple: L. P. A., 1925, 1st Sch., Pt. II.; and see note to para. (e), *inf.*

Payment of fines and fees.

As to fines and fees, see sub-paras. (vi) to (ix), *inf.*; also ss. 130—1.

Devolution on death of trustee.

As to devolution on the death of a trustee, see Ad. of E. A., 1925, ss. 1 and 3, and T. A., 1925, s. 18; the last sentence of this para. makes the law retrospective in the case stated.

(c) In the case of manors in which it was the practice of copyholders in fee to grant derivative interests to persons who were admitted as copyholders of the manor in respect of those interests, the enfranchisement of the land, and vesting of the same in the copyholder in fee (not being a mortgagee) or other person entitled under this schedule shall enure for the benefit of every person having or entitled to acquire any customary estate or interest in the land, and every such person shall (without prejudice to the provisions of Part I. of this Act) become entitled to a legal estate (if the interest is capable of subsisting as a legal estate) or equitable interest in the enfranchised land corresponding to his former customary or other estate or interest, but subject to the manorial incidents affecting such estate or interest until the same are extinguished under Part VI. of this Act, and so that a mortgagee of the inheritance shall take only a term of years absolute:

"Capable of subsisting as a legal estate": s. 188 (13). See also as to derivative interests, the provisoes to paras. (2) and (3), *sup.*, and provisoes (i) and (ii), *inf.*

The vesting of interests derived out of the fee simple.

If the interest created is capable of taking effect as a legal estate, then the person entitled thereto will, under this Sch. and L. P. A., 1925, 1st Sch., Pts. II. to VIII., and S. L. A., 1925, 2nd Sch., take either a fee simple or a term of years absolute (as the case may require) in the rentcharge, easement or term (see L. P. A., 1925, s. 1 (1) and (2)) which is created out of the fee.

A mortgagee of any such legal derivative estate will only take a mortgage term; if the mortgage was created by deposit, the intention is clear that no estate was to be vested in the mortgagee till the event, if any, mentioned in the memorandum, occurred.

In some cases a derivative interest, such as a lease granted by a copyholder with the licence of the lord, is not subject to any manorial incidents.
"Part I. of this Act" is replaced by L. P. A., 1925, and S. L. A., 1925.

Saving of manorial incidents.

(d) Where at the commencement of this Act the copyhold land was subject to interests affecting or derived out of the fee simple which are under this Act capable of subsisting at law, but immediately after such commencement were not capable of being overreached by virtue of a subsisting trust for sale or a settlement, the persons entitled shall (subject to the terms of years absolute of prior mortgagees) take legal estates in the enfranchised land corresponding to their former equitable or other interests, but subject to the manorial incidents (if any) affecting such interests until the same are extinguished under Part VI. of this Act:

Thus if the land stood on the rolls in the names of trustees, on trust to give effect to a mortgage of a portions term, which, as respects the copyholds, was equitable, still as the term was paramount to the settlement, the mortgagees would acquire a legal term in the land subject to cesser on redemption.

Estates subsisting at law which cannot be overreached.

(e) If at the commencement of this Act there is a person entitled to a perpetually renewable lease in the copyhold land (not being a mortgagee) the freehold estate in fee simple shall vest (subject as provided in this schedule) in that person as if he had been a copyholder in fee:

This para. gives effect to s. 135, *sup.* If the interest has been mortgaged, the mortgagees will take mortgage terms under L. P. A., 1925, 1st Sch., Pts. II. and VII.; see also para. (1) (f), *sup.*

Perpetually renewable copyholds.

Though the copyholder may initially take the fee simple, it will, if necessary, be divested and placed in the person entitled under L. P. A., 1925, 1st Sch., Pts. II. *et seq.*, and S. L. A., 1925, 2nd Sch.; see L. P. A., 1925, s. 202.

How they vest.

(f) If the copyholder in fee is a mortgagee the freehold estate in fee simple shall (subject to the terms of years absolute of any mortgagees) vest in the person entitled to the equity of redemption:

This is in accordance with L. P. A., 1925, 1st Sch., Pt. VII., para. 3. This and the next two paragraphs are inserted by virtue of the L. P. (Amend.) A., 1924, 2nd Sch., para. 4 (2).

Person entitled to the equity of redemption.

(g) If the copyholder in fee, or other person entitled to an interest corresponding to a legal estate, is a trustee for a corporation or other person absolutely and beneficially entitled, the freehold

estate in fee simple, or other corresponding legal estate (as the case may be) shall vest in the corporation or other person so entitled:

Estates divested out of certain trustees.

Vesting in a corporation.

This is in accordance with L. P. A., 1925, 1st Sch., Pt. II.; see in particular para. 3. If the land is vested in trustees for sale it remains in them: *ib.* There is no objection to vesting the land in a corporation; it is, for the purposes of the compensation scale set out at the end of the 13th Sch., treated as a person of the age of 40 years.

(h) If a person has, under the Limitation Acts, acquired a customary estate corresponding to a legal estate, then a legal estate corresponding to the customary estate so acquired shall vest in him.

Limitation Acts, persons entitled under.

The "Limitation Acts" mean the R. P. Lim. Acts, 1833, 1837 and 1874: see s. 188 (11). The operation of these Acts is saved: L. P. A., 1925, s. 12.

This para. is in accordance with the principle of L. P. A., 1925, 1st Sch., Pt. II., but no reference to the Lim. Acts is required in that Sch., for, save in the case of registered land (as to which, see L. R. A., 1925, s. 75), a legal estate in freeholds or leaseholds is in effect acquired by the squatter. Thus this para. is confined to estates corresponding to legal estates.

Provided that—

(i) If a question arises as to who had the best right to be admitted as copyholder in fee, or has otherwise become entitled by virtue of this schedule to the freehold estate in fee simple, or to a derivative legal estate, the court, on the application of the lord of the manor or any person interested in the land, may declare who had the best right to be so admitted, or has become so entitled, or, in case the person who had the best right to be so admitted, or has become so entitled, cannot be found or ascertained, then on proof that such fines and fees as are made payable by this schedule have been paid or provision made for their payment, the court, on the like application, may make an order vesting the freehold estate in fee simple, or a derivative legal estate (subject to the reservation of any terms of years absolute required for giving effect to incumbrances) in such person as may be appointed by the court for the purpose (who shall, in the case of the fee simple, be deemed to have been admitted to the inheritance), but subject to the manorial incidents affecting the same until those incidents are extinguished under Part VI. of this Act, and the lord may be so appointed and in such case shall be

deemed to have paid the fines and fees aforesaid; and

This and the following eight sub-paras. operate as provisoes to the whole of para. (8), not merely to sub-para. (h).

Construction of the provisoes.

The "best right to be admitted": see para. 8 (b), *sup.*; also, as respects perpetually renewable copyholds, s. 135, *sup.* However, the question of the "best right" will not be material unless it affects the beneficial interest. The point to be decided in all cases is, how ought the land to vest and for what estates or interests, having regard to L. P. A., 1925, 1st Sch., and S. L. A., 1925, 2nd Sch.

"Best right to be admitted," how far material.

Where the persons in whom the land ought to be vested cannot be found, there can be no objection to the court, by analogy to escheat, vesting the land in the lord, or other person who under the L. P. A., 1925, becomes entitled to the manor. As to vesting orders, see T. A., 1925, s. 44; also L. P. A., 1925, s. 9 (3), reproducing L. P. A., 1922, s. 21. Thus under Interp. A., 1889, s. 38, and L. P. A., 1925, s. 207 (c), the provisions of the T. A., 1925, apply to vesting orders made under this paragraph.

Power to make vesting orders as respects enfranchised land.

Application of T. A., 1925, to vesting order.

(ii) Where at the commencement or by virtue of this Act the copyhold land is settled land, the freehold estate in fee simple or derivative legal estate, as the case may be, shall (subject to the terms of years absolute of mortgagees having priority to the settlement) and without prejudice in equity to any incumbrance affecting any life estate or interest, vest in the tenant for life of full age or statutory owner (including a personal representative entitled to the settled land) upon such trusts and subject to such powers and provisions as may be necessary to give effect to the settlement, save that a fee simple conditional (whether legal or equitable) on the birth of issue shall take effect as and be converted into an equitable entailed interest (either general or special as the case may require), if the fee has not become absolute; and

"By virtue of this Act": this must now be read as referring to the S. L. A., 1925, under which further land becomes "settled" within the meaning of that Act; see, *e.g.*, ss. 1 (1) (ii) (iii) (iv) (v), (5), 19 (4), 20 (1) (iii) (vi) (ix) (x), 21, 25, 28, 29; and under which the class of persons to have the statutory powers is extended; for rule of construction: *ib.*, s. 119 (1) (c).

How settled land vests when enfranchised.

For the vesting of derivative legal estates, such as terms, rentcharges, and easements, see L. P. A., 1925, 1st Sch., Pt. II., para. 7 (b) to (e).

"Derivative legal estates."

The conversion of a fee simple conditional (*Doe* v. *Simpson*, 3 Man. & G. 929) into an "entailed interest" (L. P. A., 1925, s. 130) is one of the exceptions to the rule that subsisting beneficial interests are not to be altered.

Fee simple conditional on the birth of issue.

(iii) Where at the commencement of this Act the copyhold land or an equitable interest therein capable of subsisting as a legal estate was vested in an infant, the freehold estate in fee simple or

derivative legal estate, as the case may be, shall (subject as aforesaid) vest in the personal representatives or trustees of the settlement, or other persons who, under Part I. of this Act, become entitled to the legal estate of the infant; and

Vesting of enfranchised land during a minority.

"Copyhold land" s. 189. "Capable of subsisting as a legal estate": s. 188 (13); L. P. A., 1925, s. 1. "Subject as aforesaid": this refers to the terms which will vest in mortgagees.

The land vests in accordance with L. P. A., 1925, 1st Sch., Pt. III.; S. L. A., 1925, 2nd Sch., para. 3; see also S. L. A., 1925, s. 19 (3). Where a legal estate belongs beneficially to an infant and a person of full age a trust for sale arises, but where the infant is beneficially entitled for life only with a person of full age similarly entitled, then the land vests in the person of full age as settled land, not on trust for sale. For the rules for construing references to repealed provisions: L. P. A., 1925, s. 207 (c); S. L. A., 1925, s. 119 (1) (c).

References to repealed provisions.

(iv) Where at the commencement of this Act the copyhold land was held in undivided shares, the entirety of the freehold estate in fee simple shall (subject to any terms of years absolute required for giving effect to mortgages affecting the entirety), vest in trustees for sale in accordance with the provisions of Part I. of this Act; and

Vesting of enfranchised land formerly belonging to tenants in common or co-parceners.

It will vest in trustees for sale (including in proper cases the Public Trustee, till new trustees are appointed in his place) under L. P. A., 1925, 1st Sch., Pt. IV.; see also *ib.*, s. 207 (c).

(v) Where at the commencement or by virtue of this Act the copyhold land was or is made subject to a trust for sale, the freehold estate in fee simple shall (subject to the terms of years absolute of mortgagees) vest in the trustees for sale in accordance with this Act; and

Land held on trust for sale vests in the trustees for sale under L. P. A., 1925, 1st Sch., Pt. II.; see also *ib.*, s. 207 (c).

This para. only speaks of the freehold estate in fee simple, but the principle is equally applicable to derivative legal estates: L. P. A., 1925, 1st Sch., Pt. II.

Vesting of enfranchised land held expressly or by statute on trust for sale.

As to trusts for sale implied during a minority, see note to para. (iii), *sup.*; as to those implied by reason of the land being held in undivided shares, see note to para. (iv), *sup.* As to other implied trusts for sale, see L. P. A., 1925, s. 31 (right of redemption barred), s. 32 (land purchased with money subject to a personalty settlement), s. 25 (4) (a trust either to retain or sell), s. 36 (beneficial joint tenancies). Also if land is purchased in breach of trust, there is an implied trust for sale; this, however, cannot well happen after 1925: see L. P. A., 1925, s. 28, though land purchased under that s. will be held on trust for sale.

Implied trusts for sale.

If an intestacy occurs after 1925, the land passing to the personal representatives is held on trust for sale: Ad. of E. A., 1925, s. 33. To a limited extent the rights of a personal representative are made retrospective, as respects perpetually renewable copyholds, by s. 135, *sup.*

For the meaning of a "trust for sale," see s. 188 (30), *sup.*, and L. P. A., 1925, s. 205 (1) (xxix); as to duration, *ib.*, s. 23; and as to power to postpone, *ib.*, s. 25.

(vi) Where under the provisions of this schedule the freehold estate in fee simple is (subject or not to any mortgage term), made to vest in any person who was not the copyholder in fee at the commencement of this Act, then such person shall be deemed to have been admitted tenant to the inheritance immediately before such commencement, and such person shall (save as hereinafter provided) be personally liable to pay the fines and fees which would have been payable by him on admittance; and

"Copyholder in fee" means the person who is admitted in respect of the inheritance: s. 189.

Liability for fines and fees of the person (not admitted) in whom the enfranchised land vests.

The fact that the person in whom the fee simple is made to vest is "deemed to have been admitted to the inheritance" does not seem to be of importance, save for the purpose of making him liable for the fines and fees which would have been payable had he been actually admitted. This para. lays down the general principle which is qualified (see the words "save as hereinafter provided") by the next three paras. As to fines, see s. 130; as to fees, see s. 131.

(vii) If two or more persons together constitute the person who, immediately before the commencement of this Act, had the best right to be admitted as aforesaid, or in whom the freehold estate in fee simple is made, by virtue of this schedule, to vest without having actually been admitted as copyholders in fee, they shall not be personally liable under the foregoing provisions to pay any greater fines and fees than would have been payable if one of them only had been admitted tenant to the inheritance; and

Single fine, &c. payable only, though the land becomes vested in more than one person.

For the fines which would, independently of this para., have been payable where the Acts vested the land in joint tenants (not on the rolls), see Elton, 2nd ed., 180. In practice, only one of several joint tenants was admitted if the land was to be dealt with immediately and the custom allowed it, so as to save fines. The Act vests the land in the persons entitled, without regard to any fines which would thereby accrue, hence as the fines are saved by the preceding para. it is only fair to assume that the usual precautions against the increase of fines would have been taken.

(viii) If at the commencement of this Act there is a copyholder in fee (whether or not being a mortgagee) then notwithstanding that, by virtue of this Act, the freehold estate in fee simple is made to vest in some other person who has not been admitted to the inheritance, but is deemed to have

been so admitted, no fines or fees shall be payable on that account; and

No fine, &c. payable by reason of the vesting if there is a tenant on the rolls.

The mere vesting by the Acts of the fee simple in persons who are not tenants on the rolls is not to give rise to a claim for fines, &c., for the assurance is involuntary.

(ix) No fines or fees shall be payable by reason only of the vesting, by virtue of this Act, of a term of years absolute perpetual rentcharge or other derivative legal estate in the person entitled thereto, although he may not have been admitted at the commencement of this Act.

No fines, &c. payable by reason of the vesting of a derivative legal estate.

The fines, &c. payable on an admission to a derivative legal customary estate are usually so small that it is sufficient to save the lord's and steward's rights in regard to those attributable to admissions to the customary fee simple.

"By virtue of this Act": see now L. P. A., 1925, s. 207 (c); 1st Sch., Pt. II.

Section 138.

THIRTEENTH SCHEDULE.

Compensation for Extinguishment of Manorial Incidents.

Part I.

Form No. 1.

Compensation Agreement.

Manor of , in the County of .

An Agreement made the day of 19 , Between *A.B.*, of &c. (Lord of the above-mentioned Manor) of the first part, *C.D.*, of &c. (Mortgagee of the said Manor) of the second part, *E.F.*, of &c., and *G.H.*, of &c. (Settled Land Act Trustees of the Vesting Deed affecting the said Manor) of the third part, *X.Y.*, of &c. (the Owner of the land described in the First Schedule hereto, formerly copyhold of the said Manor but now enfranchised by virtue of the Law of Property Act, 1922) of the fourth part, and *H.J.*, of &c., and *K.L.*, of &c. (Settled Land Act Trustees of the Vesting Deed affecting the said land), of the fifth part.

[Note.—In framing compensation agreements only the persons who on a sale of the manorial incidents and of the land affected would have been able to make a title

thereto respectively and give a receipt for the purchase money will be made parties (*a*).]

WITNESSETH AS FOLLOWS:—

1. Pursuant to the Law of Property Act, 1922, it is agreed that the compensation for the extinguishment of the manorial incidents saved by Part V. of that Act (*b*) affecting the said land [and of the rights of the lord in or to any mines and minerals in or under the said land and the sporting and other rights affecting the same preserved by the Twelfth Schedule to that Act] shall be the sum of pounds with interest thereon payable half yearly at the rate of five and a half pounds per cent. per annum from the date hereof until paid [*or* the principal sum of pounds to be paid by twenty equal instalments (*c*), the first instalment to be paid on the first day of January next with interest at five and a half per cent. per annum on the said principal sum from the date hereof and a further instalment with interest at the like rate on so much of the said principal sum as for the time being remains unpaid to be paid on every subsequent first day of January until the said principal sum shall be fully paid (all interest up to date being paid with the instalments) and so long as any of the said instalments and interest remain payable a terminable and variable rentcharge commencing from the date hereof and accruing from day to day but payable at the same time as the instalments and interest shall issue out of the said land [*or* the part of the said land described in the first part of the First Schedule hereto] of an amount equal to the said instalments and interest from time to time payable and so as to secure the same].

(*a*) Thus if the manor or the land is held on trust for sale the trustees for sale would be the necessary parties, or if the manor or the land is vested in personal representatives they would be the persons to act. This form is only given for purposes of illustration; it will generally be worth while for a lord of a manor to have a form prepared applicable to his title to the manor which the steward can furnish to the tenant to complete by showing his title. As to costs, see ss. 138 (5) (vi), 140 (d), *sup.*; also L. P. A., 1925, s. 48 (1). **Parties to compensation agreements.** **Costs and preparation.**

No stamp duty is payable in respect of compensation agreements: s. 139 (1) (vii). **Stamp duty.**

(*b*) "Saved by Part V.," see s. 128 (2), *sup.* As to the mines, sporting rights, &c., see 12th Sch., paras. (5) and (7).

(*c*) As to whether the compensation is payable by instalments or not, see ss. 139 (1) (v), 142 (b), *sup.* As to the priority of the rentcharge: s. 138 (6) and note thereto.

2. The said (*the person who retains the custody of the documents mentioned in the first part of the Second Schedule which relate to the manor*) hereby acknowledges the right of the said to production of the documents (*d*) mentioned in the first part of the Second Schedule hereto and to delivery of copies thereof [and hereby undertakes for the safe custody thereof].

3. The said (*the person who retains the documents mentioned in the second part of the Second Schedule which relate to the land*) hereby acknowledges the right of the said to production of the documents mentioned in the second part of the Second Schedule hereto and to delivery of copies thereof [and hereby undertakes for the safe custody thereof].

4. The stewards compensation and all costs and expenses paid or incurred by the lord and recoverable from the tenant in respect of this extinguishment have been included in the compensation money aforesaid (*e*).

As WITNESS the hands of the parties hereto the day and year first above written.

[NOTE.—If the compensation is not paid in one gross sum, then the agreement should be executed in duplicate. If the tenant releases his rights in the minerals and grants any facilities for working the same the release and grant may be inserted in the agreement which should then be executed under seal. Though the mines and minerals included in the copyhold tenement are enfranchised, the rights in relation thereto are not affected unless expressly included as in paragraph 1.

The undertaking in paragraphs 2 and 3 will be omitted where a mortgagee or trustee retains the documents.]

(*d*) As to inspection and custody of court rolls, see ss. 144 and 144A, *sup.*

(*e*) As to steward's compensation, see s. 139 (1) (iv); as to costs recoverable from the tenant, ss. 138 (5) (vi), 140 (d); as to costs of plan, see note to 1st Sch., *inf.*

The FIRST SCHEDULE referred to in the above Agreement.

DESCRIPTION OF THE LAND AFFECTED BY THE MANORIAL INCIDENTS.

[NOTE.—This description will be taken from the Court Rolls, unless a new description (*f*) is agreed to. In default of agreement the party requiring a plan or new description must bear any additional costs incident thereto.]

The SECOND SCHEDULE referred to in the above Agreement.

FIRST PART.

Particulars of documents relating to the said Manor and retained by the said .

SECOND PART.

Particulars of documents relating to the said land and retained by the said .

FORM No. 2.

RECEIPT FOR RENTS, &C. AND GROSS SUM TO BE ENDORSED ON THE COMPENSATION AGREEMENT.

The Manor of in the County of .

1. The within-named lord of the above-mentioned manor hereby acknowledges that all rents, fines, reliefs, heriots and fees payable in respect of the land referred to in the within Agreement have been duly discharged (*g*).

2. The said lord [*or* The within named and (as trustees for the purposes of the Settled Land Acts of the Vesting Deed affecting the said manor *or other the proper description of the persons who would be entitled to give a receipt for the proceeds of the sale if the manorial incidents were sold*)] hereby acknowledge[s] the receipt of the Compensation money by the

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(*f*) As a general rule it will be worth while for both parties to agree to an up-to-date description, linking it up with the description on the rolls. Where the land cannot be identified an order from the Minister must be obtained under s. 139 (1) (vi). Costs of plan; identity.

(*g*) All arrears of customary payments must be paid: note to s. 138 (1).

within written Agreement agreed to be paid and all interest (if any) due thereon (*h*).

Dated this day of 19 .

[NOTE.—Paragraph 2 will only be used when the compensation is paid in a single gross sum. If a rentcharge is created separate receipts must be given as and when each instalment is paid.]

Section 139.

PART II.

SCALE OF COMPENSATION FOR EXTINGUISHMENT OF MANORIAL INCIDENTS.

Fines Arbitrary.

1. In fine arbitrary cases where a fine is payable on alienation by, as well as on the death of, a tenant, the compensation for fines shall not exceed the number of years' annual value of the land according to the age of the tenant as set forth in the table annexed to this schedule.

For ascertaining the annual value, see para. 3, *inf.*

Only half the compensation is payable if the fine is payable in one event only: para. 9. See also para. 10, *inf.*

"According to the age of the tenant": if the "tenant" (see s. 189) is a corporation the age is taken as 40: see note at foot of Table.

Examples. For examples of calculations for ascertaining the compensation payable under the scale, see notes at the end of the 14th Sch. This scale is also set out in Pt. VII. of the M. I. (Ext.) R., 1925, relating to voluntary and compulsory extinguishment pursuant to a notice to ascertain the compensation, or under Cop. A., 1894, as thereby applied.

2. The table is calculated on the principle that a fine based on two years' annual value is payable on each change of tenancy; therefore, in those manors in which the customary fine on alienation by, or on the death of, a tenant, is based on more or less than two years' annual value, a proportionate increase or reduction shall be made in the amount of the compensation.

Table based on two years' annual value. See also note at foot of the Table. This para. provides for the necessary adjustments.

3. In estimating the annual value of the land, no deduction shall be made for land tax or landlord's property tax, but the quit rent shall be deducted, and, where there are buildings, allowance shall be made for keeping the buildings in repair. In default of agreement the gross annual value of the land as separately assessed

(*h*) If the manor is held on trust for sale the trustees for sale must give the receipt.

for the purposes of Schedule A. of the Income Tax Act, shall (save as hereinafter provided and unless the Minister for any special reason otherwise directs) be used as the basis for ascertaining the annual value: Provided that either party may in any case require the annual value to be assessed by an agreed valuer or by a valuer appointed by the Minister.

Annual value.

Quit rents are taken at twenty years' purchase, para. 11, hence the deduction to avoid double compensation.

"Save as hereinafter provided," namely, respecting building land: para. 4.

4. Where there are facilities for improvement or the land has a present or prospective building value, one twentieth part of the capital value of the land as freehold to be determined (in default of agreement) by a valuer appointed by the Minister, shall be used as a basis for ascertaining the annual value.

Building land.

Not more than one valuer is allowed: s. 139 (2) (c). If the parties do not agree the compensation, only one valuer can be employed: M. I. (Ext.) R., 1925, r. 2.

Fines Certain.

5. In fine certain cases where a fine is payable on alienation by, as well as on the death of, a tenant, the compensation for fines shall be calculated by multiplying the amount of the fine by one half of the number of years' purchase given in the table according to the age of the tenant.

Thus the annual value is of no consequence for ascertaining the compensation for a fine certain. See also paras. 9 and 10, *inf.*

Reliefs.

6. The amount of compensation for a relief shall be calculated in like manner as a fine certain.

Reliefs are frequently payable in respect of freehold land on an alienation. Here again the annual value is of no consequence.

Heriots.

7. The compensation for a heriot payable on alienation by, as well as on the death of, a tenant, shall be calculated by multiplying the value of the heriot by one half of the number of years' purchase given in the table according to the age of the tenant.

Heriots are converted into money payments by s. 128 (2), *sup.*

8. The value of a heriot shall be ascertained from the average value of the last three heriots taken or paid in

respect of the land enfranchised. If that information cannot be obtained without undue expense the following circumstances shall be taken into account in fixing the value of the heriot, namely, the nature of the heriot, the character and value of the land, the condition in life of the tenant, and whether the heriot can be seized without as well as within the manor.

Valuation of heriots.

This valuation is required for the purposes of the last para. The Minister can give assistance under s. 138 (9).

When Fine or Heriot payable only on one of the Events of Alienation or Death.

9. The table being calculated on the assumption that fines and heriots are payable both on alienation *inter vivos* by a tenant and on his death, when a fine, whether arbitrary or certain, or a heriot, is payable only on one of those events, then only one half of the compensation calculated as previously directed shall be given.

Reduction of amount payable for fines and heriots.

This para. automatically alters the table; the alteration is purely mathematical and consequential.

When Fine or Heriot payable on Death of Lord.

10. In manors in which fines or heriots are payable on the death of the lord, as well as on alienation by, or on the death of, a tenant, the compensation on the extinguishment of manorial incidents shall be increased according to the nature and amount of the customary fine or heriot payable in the manor on the death of the lord.

Additional compensation.

Generally these fines are the same as on the death of the tenant or on alienation. If so, the addition will be purely mathematical, the calculation will be the same as under para. 9, save that the age of the lord will be taken in place of the age of the tenant.

Quit Rents and other Annual Payments.

11. The compensation for quit rents, free rents, and other annual rents, services, or payments, shall be calculated at twenty years' purchase.

Twenty years' purchase.

These are deducted from the annual value under para. 3. Neither annual value nor age has any bearing on this compensation.

Timber.

12. Compensation for timber shall be ascertained as follows:—Where by a special custom of the manor the

lord can enter upon the land, and cut and carry away the timber without the consent of the tenant, its whole value, after making a sufficient allowance for repairs, shall be given to the lord. But where there is no special custom, so that the ordinary law of copyholds is applicable and therefore the lord cannot enter and cut without the consent of the tenant, one half only of its value, after making a sufficient allowance for repairs, shall be given. If there be any other special custom in the manor relating to timber, such custom shall be regarded.

Valuation.

Only one valuer will be employed: s. 139 (2) (c).

Timber is not reserved to the lord by the 12th Sch., but is one of the incidents saved by s. 128 (2) until the incidents are extinguished.

Other Incidents.

13. The compensation for forfeitures and all other incidents of copyhold tenure extinguished or not saved by virtue of this Act and not otherwise provided for shall be 20 per cent. of the annual value of the land ascertained as provided in paragraphs 3 and 4, or where the copyhold interest liable to forfeiture is less than a customary fee simple or is subject to a lease binding on the lord 20 per cent. of the annual value of such copyhold interest to be ascertained in such manner as the Minister may determine to be proper.

This paragraph extends to forfeitures, whether or not for the conveyance or attempted conveyance of an estate of freehold in the land or for alienation without licence by way of sale, lease, mortgage, or otherwise:

Provided that, where by the custom of the manor the tenant has an unrestricted right of demising and otherwise dealing with the land without the licence of the lord, no compensation shall be payable under this paragraph unless the Minister otherwise determines; and where the unrestricted right relates to part only of the land the compensation shall be adjusted accordingly.

Forfeitures.

This para. is printed as amended by L. P. (Amend.) A., 1924, 2nd Sch., para. 4 (3). "Not saved": see s. 128 (2), *sup.*

A lease granted under a licence or under a custom would have bound the lord had the land escheated; its existence might have reduced the value of the land when he took possession.

"Whether or not for the conveyance," &c.: see s. 128 (2) (c), which destroys the right to forfeit for conveying the land by a mode applicable to freehold land; the amount of the compensation is not, however, affected by such destruction.

General principle.

The general principle as to compensation is enacted in ss. 138 (4), 139 (1) (ii): see notes thereto, *sup.*; but for this para. no compensation would have been payable for forfeitures: *ib.*

Notwithstanding s. 138 (4), proviso, the ruling provision as respects forfeitures is s. 139 (1) (ii), hence it is conceived that, where there was an unrestricted right to demise, the Minister would not allow substantial sums to be paid for loss of forfeiture merely on account of waste or alteration of boundaries, &c., though, as constituting a loss to the lord, these can be taken into account.

New scale.

The new scale which the Minister can prescribe is intended to remove injustice in manors (*e.g.*, those within the Honor of Clitheroe) where the tenant can demise or otherwise deal with the land without licence; the fact that the lessee had to acquire the term by surrender and admission does not take the case out of the para.; that merely affects the form and mode of procedure; it does not affect the tenant's powers; moreover the words "and otherwise dealing, &c." show that the ordinary modes of assuring copyholds by surrender and admission are not regarded as restricting the right of disposition. A copyholder usually had a restricted right to demise for a year without licence; if by the custom he could have demised for any term of years, that is an "unrestricted right." For the power to prescribe a new scale: s. 139 (1) (viii), *sup.*

Perpetually Renewable Copyholds.

14. In the case of perpetually renewable copyhold land the compensation for the extinguishment of the manorial incidents payable on renewal shall be twenty years' purchase of the yearly rent (including additional rent) which would have been payable under the 15th Schedule to this Act if that Schedule were applicable, and until the incidents are extinguished the said rent (including as aforesaid) shall be payable as a quit or free rent in respect of the land, and except in so far as the same shall have been paid shall be added to the compensation.

The copyhold land to which this para. applies is enfranchised by s. 135.

"Yearly rent."

To ascertain the rent for which twenty years' purchase is to be given, see 15th Sch., para. 12. See also s. 145, *sup.*, as to underleases.

The compensation will be payable under s. 139, either in a gross sum or by a terminable rentcharge.

Escheat and other Rights reserved.

15. The right of escheat being abolished for the benefit of the Crown, or the Duchy of Lancaster or the Duke of Cornwall, its value is not to be taken into consideration.

If any rights reserved to the lord by the Twelfth Schedule to this Act are acquired by the tenant, the amount of the compensation therefor shall be ascertained by agreement.

Abolition of escheat.

As to the abolition of escheat on deaths after 1925, see Ad. of E. A., 1925, s. 45 (1) (d), reproducing L. P. A., 1922, s. 148 (d). Real and personal estate, in default of the new statutory next of kin, passes to the Crown, &c. as *bonâ vacantia:* Ad. of E. A., 1925, s. 46 (1) (vi). But the Crown will in the ordinary course provide for dependents of the intestate: *ib.* For the meaning of "statutory next of kin": *ib.*, s. 50 (1).

Rights reserved to the lord.

As respects the rights reserved to the lord (12th Sch., para. 5), these can only be acquired by the tenant under an agreement. See also s. 138 (12).

When Land held by joint Tenants or on behalf of Tenants in common.

16. In the case of an extinguishment of manorial incidents by joint tenants, the compensation for fines, and heriots, if any, shall be based upon such a single life as may be equivalent to the expectation of survivorship of the joint lives according to the rules and tables appended to the Succession Duty Act, 1853. This provision shall apply to an extinguishment of manorial incidents by trustees for sale (whose expectation of survivorship shall be taken into account) on behalf of persons interested as co-parceners or tenants in common in the net proceeds of sale.

Joint tenants, expectation of survivorship.

In view of the definition of "tenant" in s. 189, it is not the age of the person entitled to the beneficial interest in the proceeds of sale which is to be taken into account, but the age of the tenant for life, statutory owners, trustees for sale, Public Trustee (a corporation), personal representatives or other persons in whom the legal estate is vested by the 12th Sch., para. (8), *sup.* (as amended), and by 1st Sch. to the L. P. A., 1925. Unless the land is settled land, all joint tenants will hold on trust for sale. There can be no tenants in common or co-parceners.

Interest.

17. Interest shall be payable half-yearly on the amount of the compensation at the rate of five and a half pounds per cent. per annum from the date of the agreement or notice requiring the ascertainment of the compensation to the date of payment of the compensation, unless the compensation is paid by way of an annual terminable rentcharge under this Act.

Rate of interest.

As to rate of interest, see ss. 138 (7), 139 (1) (v) (x). Thirty days' grace is given by s. 139 (1) (v) if the compensation is paid in a gross sum. The terminable rentcharge is made up of equal yearly sums as respects principal, while interest at $5\frac{1}{2}$ p. c. is paid on the amount of the principal remaining undischarged: *ib.*

Date of Computation.

18. The value of any matter to be taken into account in ascertaining the compensation payable shall be calculated as at the date of the extinguishment.

Date of extinguishment.

The date of extinguishment is either—

(a) the date of the compensation agreement: s. 138 (1) (a); or

(b) the date of service of notice: *ib.* (b); or

(c) the expiration of the ten years (or specially extended period) from 1st January, 1926: s. 138 (1) (c). See also s. 140.

Table referred to in the foregoing Schedule, providing a Scale of Compensation for Extinguishment of Manorial Incidents.

Age of Tenant.	Number of Years' Purchase.	Age of Tenant.	Number of Years' Purchase.	Age of Tenant.	Number of Years' Purchase.
5 or under	1·06	38	2·00	72	3·31
		39	2·03	73	3·35
		40	2·07	74	3·38
6	1·09	41	2·10	75	3·41
7	1·11	42	2·14	76	3·45
8	1·14	43	2·17	77	3·48
9	1·16	44	2·21	78	3·51
10	1·19	45	2·25	79	3·54
11	1·21	46	2·29	80	3·56
12	1·24	47	2·33	81	3·59
13	1·26	48	2·36	82	3·62
14	1·29	49	2·40	83	3·64
15	1·31	50	2·44	84	3·67
16	1·34	51	2·48	85	3·69
17	1·37	52	2·52	86	3·71
18	1·39	53	2·56	87	3·73
19	1·42	54	2·60	88	3·75
20	1·45	55	2·65	89	3·77
21	1·48	56	2·69	90	3·79
22	1·51	57	2·73	91	3·80
23	1·53	58	2·77	92	3·82
24	1·56	59	2·81	93	3·83
25	1·59	60	2·85	94	3·85
26	1·62	61	2·89	95	3·86
27	1·65	62	2·93	96	3·87
28	1·68	63	2·97	97	3·89
29	1·71	64	3·01	98	3·90
30	1·74	65	3·05	99	3·91
31	1·77	66	3·09	100	3·92
32	1·80	67	3·13	101	3·93
33	1·83	68	3·17	102	3·94
34	1·86	69	3·20	103 or upwards	3·96
35	1·90	70	3·24		
36	1·93	71	3·28		
37	1·96				

[Age of tenant.] In constructing this Table a fine arbitrary on admission has been taken as based on two years' annual value, and whilst the average fine interval has been assumed to be fourteen years, regard has been had to the age of the tenant.

[Corporation.] Where the enfranchised land is by this Act made to vest in a corporation the same compensation shall be payable as if forty years were the age of the tenant.

FOURTEENTH SCHEDULE.

Section 139.

SCALE OF STEWARD'S COMPENSATION FOR LOSS OF OFFICE.

In fine arbitrary cases.	In fine certain cases.	Amount of compensation to the steward.
Where the compensation to the lord—	Where the compensation to the lord—	£ s. d.
Does not exceed 1*l.*	Does not exceed 12*s.*	0 7 6
Exceeds 1*l.* but does not exceed 5*l.*	Exceeds 12*s.* but does not exceed 3*l.*	0 15 0
Exceeds 5*l.* but does not exceed 10*l.*	Exceeds 3*l.* but does not exceed 6*l.*	1 10 0
Exceeds 10*l.* but does not exceed 15*l.*	Exceeds 6*l.* but does not exceed 9*l.*	3 0 0
Exceeds 15*l.* but does not exceed 20*l.*	Exceeds 9*l.* but does not exceed 12*l.*	4 10 0
Exceeds 20*l.* but does not exceed 25*l.*	Exceeds 12*l.* but does not exceed 15*l.*	6 0 0
Exceeds 25*l.* but does not exceed 50*l.*	Exceeds 15*l.* but does not exceed 30*l.*	9 0 0
Exceeds 50*l.* but does not exceed 100*l.*	Exceeds 30*l.* but does not exceed 60*l.*	10 10 0
For every additional 25*l.* or fractional part of 25*l.* over and above the first 100*l.*	For every additional 15*l.* or fractional part of 15*l.* over and above the first 60*l.*	0 7 6

1. A steward appointed after the passing of this Act shall not be entitled to compensation for loss of office.

"Passing of this Act," *i.e.*, 29th June, 1922. This Sch. becomes Part VIII. of the M. I. (Ext.) R., 1925, hence is applicable when the compensation is ascertained thereunder.

2. Where the compensation agreement, or notice to ascertain the compensation, relates to more than one tenement, the steward's compensation shall be calculated on the amount of the compensation payable to the lord under the agreement or notice.

As to when one notice is sufficient for more than one tenement, see s. 138 (2), *sup.* Several tenements.

3. The remuneration of solicitors in connexion with the extinguishment of manorial incidents shall from time

to time be prescribed and regulated by general orders made by the Committee in England constituted or nominated under section two of the Solicitors Remuneration Act, 1881, and that *the* Act shall apply accordingly, and, if any dispute arises as to costs or expenses, the same shall be taxed by the registrar of the county court.

Taxation of costs.

These are remitted to the registrar of the county court to save costs. For the order to be made under this rule, see Appendix No. I., Vol. II.

Solicitors' remuneration.

The word in italics is a clerical error.

4. Where the lord is a solicitor, he shall, if he acts for himself, be entitled to costs and expenses in place of the steward, but (there being no steward) not to any steward's compensation unless otherwise agreed.

Examples of ascertained compensation.

In the following examples the annual value of the land, or in the case of building land, one-twentieth of the capital value of the land as freehold, is taken as £100; and the age of the tenant, or in the case of joint tenants, the expectation of survivorship is taken at forty years. As no remuneration order has been made at the time of going to press, the costs are merely estimated.

EXAMPLE I.

Fine arbitrary case.

First, in fine arbitrary cases, where a fine based on two years annual value of the property is payable on alienation by and on the death of the tenant, and not on death of the lord—

	£	*s.*	*d.*
*For fine $2{\cdot}07 \times$ £100	207	0	0
For £1 relief (payable on death and alienation) $\frac{2{\cdot}07}{2} \times$ £1	1	0	8
For £40 heriot (payable on death only of tenant) $\frac{2{\cdot}07}{4} \times$ £40	20	14	0
For 1*s.* quit rent $20 \times 1s.$	1	0	0
For timber, valued at £80 (no special custom): deduct 5 p. c. for repairs: $\frac{1}{2} \times$ £76	38	0	0
For forfeitures (no unrestricted right of demising) $\frac{20}{100} \times$ £100	20	0	0
Agreed value of lord's sporting rights	5	5	4
Agreed value of lord's minerals (gravel pit)	18	0	0
Total compensation to lord	311	0	0
Add compensation to steward (appointed before 29th June, 1922)	13	17	6
Add lord's costs (say)	5	2	6
Total compensation and costs	£330	0	0

* Had the fine arbitrary been based $1\frac{1}{2}$ years annual value on both alienation and death, three-fourths only of this multiplier (2·07) would have been applicable; if on $1\frac{1}{2}$ years annual value on alienation and on two years on death, seven-eighths of this multiplier would have been applicable, and so on: para. 2 of scale.

EXAMPLE II.

Secondly, in fine certain cases, where the fine is payable on alienation by the tenant, but not on death of either lord or tenant— Fine certain case.

	£	s.	d.
For fine of 2s. $\frac{2{\cdot}07}{4} \times 2s.$	0	1	0
For relief of 1s. (payable on death and alienation) $\frac{2{\cdot}07}{2} \times 1s.$	0	1	0
For £40 heriot (payable on death of lord, aged 50 years, as well as on death of tenant) $\frac{2{\cdot}07}{4} \times £40 + \frac{2{\cdot}44}{4} \times £40$	45	2	0
For timber, valued at £80 (special custom authorising lord to enter and cut): deduct 5 p. c. for repairs	76	0	0
For forfeitures (no unrestricted right of demising) $\frac{20}{100} \times £100$	20	0	0
Agreed value of lord's sporting rights	5	16	0
Agreed value of lord's minerals (unworked seams of coal)	450	0	0
Total compensation to lord	597	0	0
Add compensation to steward, appointed before 29th June, 1922, for 1st £60 (£ 10 10 0)			
for remaining £533 (£ 13 10 0)	24	0	0
Add lord's costs (say)	16	0	0
Total	£637	0	0

EXAMPLE III.

Suppose A., the former copyholder in fee, is 40 years of age; that there are no heriots or reliefs, but that the quit rent is 6d.; that the fine certain is 6d., payable on death and alienation; that a fine of 4d. is payable for neglecting to attend the customary court; that A. has demised the land to B. (64 years of age) for 999 years at a rent of £10, B. being admitted at a customary rent of 2d.; that B. has sub-demised to C. (49 years of age) for 999 years less three days at a rent of £60, C. being admitted at a rent of 1d.; and that C. has let the land on a yearly tenancy to D. (not admitted) at a rack rent producing an annual value of £160. Derivative interests within s. 142.

There will then be three compensation agreements.

(1) By A., whose interest in the land is £10 per annum. By freeholder.

	£	s.	d.
(a) Quit rent 6d. × 20	0	10	0
†(b) Fine certain 6d. × $\frac{2{\cdot}07}{2}$	0	0	6
(c) Timber. Nil.			
(d) Forfeitures (unrestricted right of demising), say the Minister allows 1½ p. c. also to cover the court fine	0	3	0
(e) Sporting rights. Nil.			
(f) Minerals not included. Nil.			
	0	13	6
Steward's compensation	0	15	0
Lord's costs (say)	1	1	0
Total	£2	9	6

† If the fine certain is payable both on the death of the tenant and on alienation, the multiplier (2·07) is divisible by 2; if payable on one event only, by 4: see paras. 5 and 9 of the scale.

By head lessee.

(2) By B., whose interest in the land is £60 – £10 = £50 per annum.

	£	s.	d.
(a) Customary rent 2*d.* × 20	0	3	4
(b) Fine certain for sub-demising 1*d.* × $\frac{3{\cdot}01}{4}$	0	0	1
(c) Forfeitures, &c., say 1½ p.c. allowed by Minister	0	15	0
	0	18	5
Steward's compensation	0	15	0
Lord's costs (say)	1	1	0
Total	£2	14	5

By sub-lessee.

(3) By C., whose interest in the land is £160 – £60 = £100 per annum.

	£	s.	d.
(a) Customary rent 1*d.* × 20	0	1	8
(b) Fine certain for sub-demising 1*d.* × $\frac{2{\cdot}40}{4}$	0	0	1
(c) Forfeitures, &c., say 1½ p. c. allowed by Minister	1	10	0
	1	11	9
Steward's compensation	0	15	0
Lord's costs (say)	1	1	0
Total	£3	7	9

EXAMPLE IV.

Owner in fee and owner of a rentcharge.

Suppose A., aged 22, the former copyholder in fee, surrenders the land to the use of B. in fee (a trustee), who is admitted and holds in trust for A.

Then A., in right of his equitable interest, grants the land to C. (aged 32), reserving to himself a perpetual rentcharge of £100. C. lets the land for a yearly tenancy producing £210 per annum.

The quit rent is 1*s.*, the fine certain (payable only on death of tenant) is 3*s.*, the heriot (payable only on death of tenant) is worth £20, and there are no reliefs, timber, sporting rights, or minerals.

Under the 12th Sch. to this Act, para. (8), and 1st Sch., Pt. II., to the L. P. A., 1925, the land vests in C. in fee simple, he takes the place of B., the terre tenant, while A. takes a legal rentcharge of £100 per annum.

There will be two compensation agreements.

By owner in fee.

(1) By C., whose interest in the land is £210 – £100 = £110 per annum.

	£	s.	d.
(a) Quit rent 1*s.* × 20	1	0	0
(b) Fines 3*s.* × $\frac{8{\cdot}80}{4}$	0	1	4
(c) Heriot £20 × $\frac{1{\cdot}80}{4}$	9	0	0
(d) Forfeitures (no unrestricted right of demising) $\frac{20 \times 110}{100}$	22	0	0
	32	1	4
Steward, appointed after 29th June, 1922. Nil.			
Lord's costs (say)	1	8	8
Total	£33	10	0

(2) By A., whose interest in the land is £100 per annum rentcharge. He is not liable for any quit rent, fine or heriot, but his rentcharge was liable to forfeiture if the land had been forfeited to the lord. By owner of rentcharge.

	£	s.	d.
Forfeitures, &c., $\frac{20 \times 100}{100}$	20	0	0
Steward's compensation. Nil.			
Lord's costs (say)	1	1	0
Total	£21	1	0

EXAMPLE V.

Suppose A. (see s. 135 and para. 14 of 13th Sch.) has been admitted tenant to perpetually renewable copyholds at a rent of 5*s.* per annum, the fine for renewal every fourteen years being 11*s.*; the annual value being £10. Perpetually renewable copyholds.

	£	s.	d.
Copyhold rent 5*s.* Additional rent under para. 12 (5) of 15th Sch. (say) 8*d.*—5*s.* 8*d.* × 20	5	13	4
Forfeitures (£10 − 5*s.* 8*d.*) = £9 14*s.* 4*d.* × $\frac{20}{100}$	1	18	10
	7	12	2
Steward's compensation	3	0	0
Lord's costs (say)	1	7	10
Total	£12	0	0

In the above examples, in addition to the compensation, all arrears of fines, quit rents, &c. must be paid; a separate receipt for these will be endorsed on the compensation agreement. Arrears.

No compensation is payable under the 13th and 14th Schedules where the case comes within s. 133, and the copyholder is converted into a leaseholder. Copyholds, for life or years without right of renewal.

FIFTEENTH SCHEDULE.

Section 145.

PROVISIONS RELATING TO PERPETUALLY RENEWABLE LEASES AND UNDERLEASES.

1.—(1) Land comprised in a perpetually renewable lease which was subsisting at the commencement of this Act shall, by virtue of this Act, vest in the person who at such commencement was entitled to such lease, for a term of two thousand years, to be calculated from the date at which the existing term or interest commenced, at the rent and subject to the lessees' covenants and conditions (if any) which under the lease would have been payable or enforceable during the subsistence of such term or interest. Conversion of perpetually renewable leases into long terms.

This Sch. is not applicable to perpetually renewable copyholds which are by s. 135, *sup.*, converted into fee simple freeholds; but the Sch. does apply to perpetually renewable leaseholds derived out of perpetually renewable copyholds: s. 145, *sup.* Not applicable to perpetually renewable copyholds.

Other exceptions.

For other exceptions, see para. 9, *inf.*

Transitional provisions.

This and the next para. are confined to transitional matters, namely, leases and underleases subsisting on 1st January, 1926.

Legal estates.

The terms created by this Sch. are "terms of years absolute," hence are legal estates.

Vesting.

They are deemed for purposes of construction to have been created before L. P. A., 1925, came into force, see s. 202 of that Act, hence the legal terms so created will pass under L. P. A., 1925, 1st Sch., to the person entitled to call for the legal estate.

Mortgages.

As to mortgages formerly affecting the perpetually renewable interest, see L. P. A., 1925, 1st Sch., Pt. VIII., para. 6.

Title acquired.

The lessee will not obtain a better title to the 2,000 years term than he had in the renewable interest: para. 4, *inf.*

Registered land.

As to registered land, see para. 19, *inf.*

Definitions applicable to this Sch.

For definitions of "lessor," "lessee," "underlessee," "perpetually renewable lease or underlease," and "underlease," applicable to this Sch., see s. 190.

(2) The rent, covenants and conditions (if any) shall (subject to the express provisions of this Act to the contrary) be payable and enforceable during the subsistence of the term created by this Act; and that term shall take effect in substitution for the term or interest created by the lease, and be subject to the like power of re-entry (if any) and other provisions which affected the term or interest created by the lease, but without any right of renewal.

"Subject to the express provisions of this Act": see para. 10, *inf.* (powers to determine the 2,000 years term, covenants to register assignments and devolutions and to produce lease); para. 11, *inf.* (liability of lessee confined to his period of ownership); para. 12, *inf.* (additional rent in lieu of fines).

"But without any right of renewal," that is, the 2,000 years term is not renewable.

Conversion of perpetually renewable underleases into long terms.

2.—(1) Land comprised in any underlease, which at the commencement of this Act was perpetually renewable and was derived out of a head term affected by this Act, shall, by virtue of this Act, vest in the person who at such commencement was entitled to the subterm or interest for a term of two thousand years less one day, to be calculated from the date at which the head term created by this Act commenced, at the rent and subject to the underlessee's covenants and conditions (if any) which under the underlease would have been payable or enforceable during the subsistence of such subterm or interest.

Underlessee's interest.

This para. is a replica of para. 1, *sup.*: see notes thereto; the only difference is that the underlessee will take a term one day less than the term out of which it is derived; see also sub-para. (3), *inf.*

For the meaning of "underlease," see s. 190 (iv).

(2) The rent, covenants and conditions (if any) shall (subject to the express provisions of this Act to the contrary) be payable and enforceable during the subsistence of the subterm created by this Act; and that subterm shall take effect in substitution for the subterm or interest created by the underlease, and be subject to the like power of re-entry (if any) and other provisions which affected the subterm or interest created by the underlease, but without any right of renewal.

(3) The foregoing provisions of this section shall also apply to any perpetually renewable subterm or interest which, at the commencement of this Act, was derived out of any other subterm or interest, but so that in every case the subterm created by this Act shall be one day less in duration than the derivative term created by this Act, out of which it takes effect.

Application to all underleases.

The two foregoing sub-paras. are framed to apply to the first perpetually renewable underlease; this sub-para. extends their operation to successive and concurrent underleases.

Incidence of equities, incumbrances, and subterms.

3.—(1) Every term or subterm created by this Part of this Act shall be subject to all the same trusts, powers, executory limitations over, rights and equities (if any), and to all the same incumbrances and obligations of every kind, as the term, subterm, or other interest which it replaces would have been subject to if this Part of this Act had not been passed, but without prejudice to the provisions of Part I. of this Act, and where an infant is entitled, the person, of full age, who by virtue of that part of this Act, becomes entitled to the legal estate of the infant shall be deemed to have been entitled to the said lease, subterm or interest at the commencement of this Act.

"But without prejudice to the provisions of Part I.": this has been replaced by L. P. A., 1925, and S. L. A., 1925.

Infants.

As to incumbrances, see L. P. A., 1925, 1st Sch., Pt. VIII., para. 6; as to infants, *ib.*, 1st Sch., Pt. III.; S. L. A., 1925, 2nd Sch., para. 3.

Vesting provisions.

If the renewable interest was vested in trustees of a settlement, the term will vest in the tenant for life or statutory owners, and must be included in a vesting instrument.

If the renewable interest was held in undivided shares, it will vest in trustees for sale: L. P. A., 1925, 1st Sch., Pt. IV.

(2) Where any subterm or interest, subsisting at the commencement of this Act, was derived out of a lease or underlease affected by this Act, but was not perpetually

renewable, the same shall be deemed to take effect out of the term created by this Act or out of any derivative subterm so created, as the case may require.

Derivative tenancies.

In other words, the term or sub-term created by this Sch. becomes the reversion expectant on the non-renewable leasehold interest. As to reversions, see L. P. A., 1925, ss. 139—142.

Title acquired and stamps.

4.—(1) This Part of this Act shall not operate to confer any better title to any term or subterm hereby created than the title to the perpetually renewable term, subterm, or interest which it replaces.

Invalid titles.

For instance, if the right to perpetual renewal was not validly created (*e.g.*, by a person not having a sufficient interest or power), then the term acquired will be defeasible, in the like event, as the original interest.

(2) This Act shall not render any lease or instrument which has been duly stamped according to the law in force at its date, liable to be further stamped, nor shall any stamp duty be payable by reason only of the creation by this Act of any term or subterm.

Stamps.

Leases for a term of ninety-nine years perpetually renewable on the dropping of a life were stamped as leases for ninety-nine years: *E. of Mount Edgcumbe* v. *I. R. C.*, 1911, 2 K. B. 24. Leases for 100 years carry a higher stamp.

Dispositions purporting to create perpetually renewable leaseholds.

5. A grant, after the commencement of this Act, of a term, subterm, or other leasehold interest with a covenant or obligation for perpetual renewal, which would have been valid if this Part of this Act had not been passed, shall (subject to the express provisions of this Act) take effect as a demise for a term of two thousand years or in the case of a subdemise for a term less in duration by one day than the term out of which it is derived, to commence from the date fixed for the commencement of the term, subterm, or other interest, and in every case free from any obligation for renewal or for payment of any fines, fees, costs, or other money in respect of renewal.

Penalty for attempted covenant to renew.

This is to discourage any purported demise with a covenant for perpetual renewal after 1925, for (subject to the lessor having a sufficient estate) it will pass a 2,000 years term, or such a term less the requisite nominal reversion, and the lessor will lose his fines on renewal.

"Subject to the express provisions": see para. 9, *inf.*

Satisfaction of existing contracts to grant perpetually renewable interests.

6.—(1) Any obligation in force at the commencement of this Act for the grant (otherwise than by way of renewal) of a lease, subterm, or other leasehold interest with a covenant or obligation for perpetual renewal shall

be deemed to be an obligation for the grant of a lease for a term of two thousand years, or, in the case of an underlease, for a term less in duration by one day than the term out of which it is to be derived, but the amount of the rent to be paid shall, if necessary, be adjusted, having regard to the loss of fines and other payments (if any) which would have been payable on renewal.

Moulding of contracts.

In this case the lessor is not penalised, because the contract was created before 1926, hence the lessee will pay an additional rent on lines similar to those obtaining where a lease is under para. 1 converted into a long term. The contract is merely moulded. As to "adjustment," see para. 16, *inf.*, and next sub-para.

"Otherwise than by way of renewal": if the lease or underlease is perpetually renewable, then it comes within paras. 1 or 2, *sup.*

(2) In case any dispute arises respecting the adjustment of the rent, the matter shall be submitted to the Minister for determination, in the manner provided by this Act.

Reference to the Minister.

See para. 16, *inf.*, for references to the Minister. For definition of "Minister," s. 188 (31).

Future contracts for renewal [and as to leases for lives].

7.—(1) Any contract entered into after the commencement of this Act, for the grant of a lease, subterm, or other leasehold interest with a covenant or obligation for perpetual renewal shall (subject to the express provisions of this Part of this Act) operate as an agreement for a demise for a term of two thousand years, or in the case of a contract for a subdemise, for a term less in duration by one day than the term out of which it is derived, to commence from the date agreed for the commencement of the term, subterm or other interest, and in every case free from the obligation for renewal or for payment of any fines, fees, costs or other money in respect of renewal.

"Subject to the express provisions": see para. 9, *inf.* Here, again, the contract is moulded on the same principle as that adopted in para. 5, *sup.*, in the case of grants.

(2) Any contract entered into after such commencement for the renewal of a lease or underlease for a term exceeding sixty years from the termination of the lease or underlease, and whether or not contained in the lease or underlease, shall (subject to the express provisions of this Part of this Act) be void.

(3) *Repealed and replaced by L. P. A.*, 1925, *s.* 149 (6).

Avoiding contracts for renewal.

The object of preventing the grant of perpetually renewable leases could, in effect, have been defeated unless a limit had been imposed on the length of the term to be granted by way of renewal.

Future terms.

A further restriction is imposed by L. P. A., 1925, s. 149 (3), under which a term will be void unless it takes effect within twenty-one years from the date of the lease. This sub-s. renders void a contract to create a term *in futuro* to take effect more than twenty-one years from the date of the contract. Here the object was to avoid unnecessary complication of title. The restriction does not affect equitable terms created by a settlement: *ib.*

Contracts to renew, protection of.

A contract to renew a lease made after 1925, or where the right of renewal is assigned after 1925, should be protected by the registration of a land charge: L. C. A., 1925, s. 10, Class C (iv).

Statutory powers to renew.

For the power for tenants for life to give effect to a valid covenant to renew, S. L. A., 1925, s. 43 (i); as to trustees for sale, L. P. A., 1925, s. 28; as to personal representatives, Ad. of E. A., 1925, s. 39.

"Subject to the express provisions": see para. 9, *inf.*

Leases for lives.

Sub-para. (3) of this para. (converting leases for lives into terms of ninety years) was repealed by L. P. A., 1925, 7th Sch., and is reproduced by s. 149 (6) of that Act.

Effect of powers to grant renewable leases.

8.—(1) Every power conferred by custom or contained in a statute (except as hereinafter mentioned) or other instrument authorising a tenant for life of full age, statutory owner, trustee, or other person to grant a lease or underlease with a covenant or obligation for perpetual renewal, shall have effect, in regard to any grant made after the commencement of this Act, as if the same authorised the grant of a lease or underlease for a term not exceeding two thousand years at the best rent that can be reasonably obtained, having regard to any fine which may be taken and to all the circumstances of the case, or, if the power authorises a grant at a peppercorn rent or other rent less than the best rent, then at any rent so authorised.

Statutory powers of leasing for 2000 years.

Independently of the settlement, the S. L. A., 1925, does not confer a power to grant *de novo* perpetually renewable leases, for s. 43 (i) is confined to giving effect to obligations previously affecting the land; but under s. 64 the court has power to authorise a lease for 2,000 years to be granted.

6 & 7 Will. 4, c. 20.

As to the restrictions formerly imposed on the grant of ecclesiastical leases, perpetually renewable: Ecclesiastical Leases Act, 1836.

"Except as hereinafter mentioned": see para. 9, *inf.*

"Instrument" does not include a statute, unless the statute creates a settlement: s. 188 (15), *sup.*

(2) Every power to grant a lease or underlease at a rent or in consideration of a fine for life or lives, or for any term of years determinable with life or lives or on the marriage of any person, shall have effect in regard to any grant made after the commencement of this Act, as if the same authorised the grant of a lease or underlease for a term not exceeding ninety years determinable after the death or marriage (as the case may be) of the original lessee or of the survivor of the original lessees by at least one month's notice in writing given to determine the same on one of the usual quarter days, either by

the lessor or the persons deriving title under him to the person entitled to the leasehold interest, or by the lessee or other persons in whom the leasehold interest is vested to the lessor or the persons deriving title under him.

This para. gives power to carry out the transaction on the lines adopted in L. P. A., 1925, s. 149 (6), in regard to subsisting leases for lives.

As to notices, *ib.*, s. 196, and para. 18, *inf.*

Power to grant leases for ninety years determinable.

9. Nothing in this Act shall prejudicially affect any right of renewal conferred by section forty-four of the Small Holdings and Allotments Act, 1908, or the power conferred by section forty of that Act, to grant leases for the purposes of that Act, with a similar right of renewal.

Saving of rights and powers under 8 Edw. 7, c. 36.

A council has, under s. 44 of the Act of 1908, power to renew a lease acquired by them for not less than fourteen years or for more than thirty-five years "and so from time to time."

Small holdings and allotments.

Under s. 40 a limited owner has power to grant a renewable lease to a council so as to give rights to a council similar to those conferred by s. 44 in regard to land hired compulsorily.

As to savings of statutory powers: L. P. A., 1925, s. 7.

Powers and covenants implied in leases and underleases affected.

10.—(1) Every lease or underlease which, by virtue of this Part of this Act, takes effect for a term of two thousand years or for a derivative term of two thousand years less one or more days (as the case may require) shall be deemed to contain—

(i) A power (exerciseable only with the consent of the persons, if any, interested in any derivative interest which might be prejudicially affected) for the lessee or underlessee by giving notice in writing to the lessor at least ten days before the lease or underlease would (but for this Act) have expired if it had not been renewed after the commencement of this Act, to determine the lease or underlease at the date on which (but for this Act) it would have expired if it had not been renewed as aforesaid;

Also a like power (exerciseable with the like consent, if any) to determine subsequently by notice as aforesaid the lease or underlease at the time at which, if this Act had not been passed and all renewals had in the meantime been made in due course, the lease or underlease would have expired if it had not been further renewed after the date of the notice:

Provided that if any such notice be given all uncommuted additional rent attributable to a fine or other

money which, if this Act had not been passed, would have been payable on a renewal made after the date of the notice, shall cease or not become payable:

Amendment. The words "cease or" in the proviso were inserted by the L. P. (Amend.) A., 1924, 2nd Sch., para. 5 (1); they cover the case where additional rent has been paid in the past, for the additional rent amounts to prepayment of fines: para. 12, *inf.* The words "shall . . . not become payable" cover the case where the lessee gives notice to determine before the additional rent is assessed.

Power to determine. The power to determine is conferred to enable a lessee to give up the lease when the rent reserved becomes greater than the annual value of the property. The lease does not determine at the date of the notice, but when it would have expired had it not been renewed. Thus if a lease is granted for sixty years, renewable at the end of the fourteenth year, and notice to determine is given, the lease will continue till the end of the sixtieth year, but no additional rent will be payable after the date of the notice.

Notices. As to service of notices, para. 18, *inf.*, and note thereto.

(ii) A covenant by the lessee or underlessee to register every assignment or devolution of the term or subterm, including all probates or letters of administration affecting the same, with the lessor or his solicitor or agent, within six months from the date of the assignment, devolution, or grant of probate or letters of administration, and to pay a fee of one guinea (which shall be accepted in satisfaction of all costs) in respect of each registration; and the covenant so deemed to be contained shall be in substitution for any express covenant to register with the lessor or his solicitor or agent, assignments or devolutions of the term or subterm, and to pay fees or costs in respect of such registration:

Covenant to register assignments and devolutions. The object of this implied covenant is to keep the lessor in touch with the estate owner of the term, for under para. 11, *inf.*, the owner is exclusively liable for rent and breach of covenant during his period of ownership; the original lessee is freed from liability in regard to breaches occurring after he has parted with his interest.

Relief against breach. Relief against forfeiture can be obtained under L. P. A., 1925, s. 146, on a breach of the implied covenant; even a breach against assignment without licence is now within the s.: see sub-s. (8).

(iii) A covenant by the lessee or underlessee within one year from the commencement of this Act to produce his lease or underlease or sufficient evidence thereof (including an assignment of part of the land comprised in the lease or underlease) with any particulars required to

show that a perpetual right of renewal was subsisting at the commencement of this Act, to the lessor or his solicitor or agent, who shall, subject to the payment of his costs, if the right of renewal is admitted or proved, endorse notice of that fact on the lease, underlease, assignment, or copy thereof, at the expense of the lessee or underlessee; and such endorsement signed by or on behalf of the lessor shall, in favour of a purchaser, be sufficient evidence that the right of renewal was subsisting as aforesaid, either in respect of the whole or part of the land as the case may require:

and the power of re-entry (if any) contained in the lease or underlease shall apply and extend to the breach of every covenant deemed to be contained as aforesaid.

Covenant for production of lease during 1926.

This covenant is of importance to the lessor to enable him to get into touch with the person entitled to the lease, for the lease may have become vested, in a person entitled to call for an assignment, under L. P. A., 1925, 1st Sch. It is also essential that the additional rent (para. 12) should be fixed before 1st January, 1927, when the first instalment becomes due.

Endorsement of right of renewal.

It will be convenient that the endorsement required under this sub-para. should be made at the same time as the endorsements under para. 14.

Meaning of "lessor."

For the meaning of "purchaser," see s. 188 (27); and for "lessor," see s. 190 (i); it includes an underlessor and any person entitled to accept a surrender, *e.g.*, a mortgagor or mortgagee in possession: L. P. A., 1925, s. 100; S. L. A., 1925, s. 52.

(2) If any dispute arises respecting the date on which a notice is authorised to be served by this section, or whether or not a lease or underlease or assignment or a copy thereof ought to be endorsed as aforesaid, the matter shall be submitted to the Minister for determination in the manner provided by this Act.

Reference to the Minister.

For references to the Minister, see para. 16, *inf.*; see also para. 14 as to matters to be agreed between lessor and lessee.

Liability of lessees and underlessees.

11.—(1) In the case of every term or subterm created by this Act or under any power conferred by this Part of this Act, each lessee or underlessee, although he may be the original lessee or underlessee, and notwithstanding any stipulation to the contrary, shall be liable only for rent accruing and for breaches of covenants or conditions occurring while he or his personal representatives shall have the term or subterm vested in him or them, and in like manner, as respects an original lessee

or underlessee, as if the term or subterm had, immediately after its creation, been assigned to him.

"Created by this Act": see paras. 1 and 2, *sup.*; "under any power conferred by this Act": see para. 8, *sup.*

Restriction on liability for rent and covenants.

An assignee is only liable for breaches occurring during his period of ownership: *Walker* v. *Reeve,* 1781, 3 Dougl. 19; *Paul* v. *Nurse,* 1828, 8 B. & C. 486. As the lessee takes for 2,000 years it would not have been right for his estate to be liable for that period: *Barnard* v. *Goodscall,* 1612, Cro. Jac. 309.

(2) Nothing in this Part of this Act shall affect the liability of any person in respect of rent accruing or the breach of any covenant or condition occurring before the commencement of this Act.

Past liabilities.

This is merely a saving of liabilities incurred before 1926.

Conversion of fines into additional rent.

12.—(1) Where, under the lease, underlease, or otherwise, any fine or other money, including a heriot, is payable by the lessee or underlessee on renewal, then and in every such case an amount to be ascertained as hereinafter provided shall, save as in this Act provided and unless commuted, become payable to the lessor as additional rent, during the subsistence of the term or subterm created by this Act, by as nearly as may be equal yearly instalments the first instalment to be paid at the end of one year from the commencement of this Act; but no sums payable for costs of examination of the lessee's or underlessee's title or of granting a new lease or underlease or of any other work which is rendered unnecessary by this Act shall be taken into account in ascertaining the additional rent.

This para. is printed as amended by the L. P. (Amendment) A., 1924, 2nd Sch., para. 5.

Heriots.

Heriots are converted into money payments: s. 128 (2), *sup.*

"To be ascertained," &c.: see next sub-para.

Costs.

"Save as in this Act provided," no additional rent is allowed by this para. for costs saved, nor is additional rent payable after notice to determine has been served: para. 10 (1), *sup.*

"Unless commuted": para. 14 (1) and note thereto.

(2) In default of agreement and unless the Minister, having regard to the practice and other circumstances of the case, otherwise directs, the following provisions shall have effect for the purpose of ascertaining the annual instalments of additional rent:—

(a) the additional rent shall be ascertained on the basis of the fines and other payments which

would have been payable on the occasion of the first renewal after the commencement of this Act, if this Act had not been passed;

(b) where the lessee or underlessee has a right to renew at different times, the occasion of the first renewal shall be such date as he may, by notice in writing given to the lessor within one year after the commencement of this Act, select from among the dates at which he would have been entitled to renew his lease or underlease had it remained renewable, or, in default of such notice, the last day on which he would have been entitled to renew, regard being had to the date of the last renewal.

Ascertainment of additional rent.

On the basis of the first fines, &c. payable; thus if a lease is renewable at the end of fourteen years for a fine of 14*l.*, the parties will generally agree to add to the yearly rent an annual sum which would, if accumulated at 5 per cent. compound interest, amount to 14*l.* at the end of the fourteenth year. Archer's Sinking Fund Table, p. 189, gives this as 14*s.* 3*d.* In difficult cases an actuary will be employed under sub-para. (5), *inf.*

Option to select date.

The option, exerciseable before 1927, is given to the lessee as corresponding with his right to select a renewal date. A longer period could not be allowed as the first instalment becomes payable (see last sub-para.) on 1st January, 1927.

(3) But where the time at or within which the said fine or other money must be paid is not definitely fixed by or ascertainable from the lease or underlease the same shall, for the purpose of ascertaining the amount of the annual instalments of additional rent, be deemed to have been payable on such date as may, within one year from the commencement of this Act, be agreed between the lessor and the lessee or underlessee or, in default of such agreement, as may be fixed by the Minister.

Renewal date not ascertainable from the lease.

For instance, if the right to renew becomes exercisable on the dropping of a life, the renewal date can only be ascertained from expectation of life tables; there should be no difficulty in agreeing this date.

(4) The additional rent shall be deemed part of the rent reserved by the lease or underlease for all purposes, including any covenant for payment of rent or proviso for re-entry contained in the lease or underlease.

Additional rent recoverable as original rent.

"For all purposes," including, for instance, relief for non-payment: Jud. A., 1925, s. 46; see also L. P. A., 1925, s. 146 (4).

(5) Subject to any order by the Minister or the court to the contrary, and in default of agreement, the amount of each annual instalment of additional rent shall be

ascertained by an actuary, regard being had to the interval or average interval occurring between the dates of renewal and to any circumstances affecting the amount payable on renewal.

Ascertainment by actuary.

For the instructions to be given to the actuary, see para. 16 (1). Under many leases investigations show that the average interval may be taken to be fourteen years: see note at foot of table to 13th Sch., *sup.*

Appeals to the court.

Appeals to the court are authorised under para. 16 (1), *inf.*

(6) If the lessee or underlessee is liable to forfeit his right of renewal if he makes default in payment of a fine or other money or in doing any other act or thing within a time ascertainable by the dropping of a life, but not otherwise, then such per centage as the Minister may generally or in any particular instance with a view to maintaining any existing practice, prescribe of the annual value of the land (ascertained as provided by this Act in the case of enfranchised land for the extinguishment of manorial incidents) shall be treated as added to the fines and other money payable by the lessee or underlessee on renewal for the purpose of ascertaining the amount of the annual instalment of additional rent, and as compensation to the lessor for loss of his right of re-entry (present or future) which would have accrued by reason of any failure to exercise the right of renewal.

Compensation for loss of right to re-enter for non-renewal.

For the rate per cent. prescribed by the Minister, see Appendix No. II., Vol. II.

This sub-para. only applies where the right to renew depends on the dropping of a life; for the ascertainment of the compensation in the case of a right to renew at the end of a term certain, see para. 16 (3), *inf.*

Ascertainment of annual value.

For ascertainment of annual value, see 13th Sch., Pt. II., paras. 3 and 4, *sup.*

Interest on fines.

13.—(1) Where, under the lease or underlease, any unpaid fine or other money payable on a renewal carries interest, then any annual instalment of additional rent payable in lieu thereof shall, until paid, carry interest from the date on which the instalment becomes payable, and at the same rate at which such interest would have been payable if this Act had not been passed.

Agreement to waive interest.

The parties could agree to waive interest under para. 14, *inf.*

(2) Where the lease or underlease does not provide for payment of such interest, then each annual instalment

of additional rent shall, until paid, carry interest at the current rate from the time when demand in writing is made claiming the money.

Interest from date of demand: 3 & 4 Will. 4, c. 42.

See Civil Procedure Act, 1833, s. 28, as to the power to allow interest from the time of demand.

The current rate is 4 per cent: *Re Hunt*, 1902, 2 Ch. 318, n.

Provisions respecting commutation of additional rent and other matters.

14.—(1) The lessor and lessee or underlessee may agree—

(a) For the commutation or discharge of any claims in respect of additional rent or any part thereof;

(b) The amount (if any) of the annual instalments of additional rent payable;

(c) The dates for payment of additional rent;

(d) The interval or average interval between dates of renewal;

(e) The dates on which the lessee or underlessee has power under this Act to determine the lease or underlease;

(f) The amount of the rent (including the annual instalments of additional rent) to be apportioned in respect of any part of the land comprised in the lease or underlease, and thereupon the lessee's or underlessee's covenants shall be apportioned in regard to the land to which the apportionment relates.

The first instalment of additional rent in default of agreement becomes payable on 1st January, 1927, under para. 12 (1), *sup.*

The interval between dates of renewal is material for the purposes of para. 12 (5), *sup.* It may also be material for ascertaining the date on which a lease will determine under a notice given under para. 10 (1) (i).

Apportionment of rent.

This is a new power in (f) to apportion rents; see also S. L. A., 1925, s. 60.

Settled land.

After 1925 the lessor (where the reversion is settled land) and the lessee or underlessee (where the term is settled land) will be the tenant for life or statutory owner, and the powers conferred by this para. will be exercisable by him; see definitions of "lessor," "lessee" and "underlessee" in s. 190.

Commuting additional rent.

As to raising money for commuting additional rent, see para. 17 (1), *inf.*; S. L. A., 1925, s. 71 (1) (vii); and as to application of capital money, *ib.*, s. 73 (1) (ix); as to trustees for sale, L. P. A., 1925, s. 28; as to personal representatives, Ad. of E. A., 1925, s. 39.

(2) A statement in writing respecting any such agreement, which is endorsed on any such lease or underlease, or the counterpart or assignment, and signed by the lessor and lessee or underlessee, shall be conclusive evidence of the matters stated, and the costs of and inci-

dental to the agreement and any negotiations therefor shall be borne by the lessee or underlessee.

Signed endorsement.

In this case the endorsement must be signed by the parties themselves; *cf.* para. 10 (1) (iii), where it can be signed on behalf of the lessor. For "purchaser," see s. 188 (27), *sup.*

Costs.

The costs are thrown on the lessee, in the same way as on an extinguishment of manorial incidents the costs will generally be borne by the tenant. See, however, para. 16 (2) as to the Minister's costs.

(3) The additional rent may, by such endorsement, be made payable by instalments at the times at which the original rent is made payable or otherwise.

Time for payment of additional rent.

For convenience, it will no doubt become the common practice to make the additional rent payable on the same days as the original rent.

Compensation of lessor's agents.

15. Any claims for compensation by any officer, solicitor, or other agent of the lessor in respect of fees or remuneration (not being remuneration attributable to work rendered unnecessary by this Act) which would have been payable by the lessee or underlessee on any renewal, if this Act had not been passed, shall be treated as part of the fines or other money payable to the lessor and be discharged out of the additional rent or commutation money or otherwise by the lessor, and the lessee or underlessee shall not otherwise be concerned therewith.

Power to raise compensation money.

For power to raise the compensation money, see para. 17 (2), *inf.*; S. L. A., 1925, s. 71 (1) (viii). The right to claim compensation will seldom arise, for it does not extend to loss of remuneration for work rendered unnecessary.

Disputes to be submitted to the Minister.

16.—(1) If the lessor and lessee or underlessee or the lessor's agent (as the case may require) do not agree, or any dispute arises as to the amount or date for payment of any annual instalment of additional rent, or the amount for which the same ought to be commuted, or the amount at which any rent ought to be adjusted, or apportioned, or the amount of compensation (if any) payable by the lessor to his officer, solicitor or other agent, or the appointment of or instructions to be given to an actuary under paragraph 12 (5) of this Schedule, the question or dispute shall be submitted to the Minister for determination, when the parties may be represented by solicitors or counsel, and the award of the Minister shall (subject only to such appeal to the court as may be prescribed by rules of court) be final.

This paragraph is printed as amended by L. P. (Amendment) A., 1924, 2nd Sch., para. 5.

(2) The Minister may issue regulations in respect of any of the matters aforesaid, and determine by whom and in what proportions the cost of any application to the Minister shall be paid.

See Appendix No. II., Vol. II., for Renewable Leaseholds Regulations, 1925.

(3) If a dispute as to the amount for which any annual instalment of additional rent ought to be commuted is submitted to the Minister, and if the lessor would (under the lease or underlease subsisting at the commencement of this Act, or any lease or underlease which would have been subsisting if this Act had not been passed and the successive renewable leases or underleases had been renewed in the ordinary course) have had a right to refuse renewal by reason of a default in payment of a fine, then the Minister shall, in the arbitration, have regard to the value of such right (unless compensation has been given for the loss of the right) in like manner as if a corresponding absolute right to determine the term or subterm created by this Act had, by reason of a corresponding default, been made exercisable by the lessor at the time at which the renewable lease or underlease would have expired if the lessor had lawfully refused to renew it.

For the purposes of this sub-paragraph the compensation to be given for the loss of the said right shall be regulated by the practice (if any) which obtained, before the commencement of this Act, in assessing the value of the said right, unless the Minister otherwise directs.

Compensation for loss of right to re-enter for non-renewal, save where the renewal depended on the dropping of a life.

This sub-para. only applies where a fine is payable on renewal; see definition of "perpetually renewable lease or underlease" in s. 190 (iii), *sup.*

"Unless compensation has been given": under para. 12 (6), *sup.*, compensation is prescribed where the time when the default is made is ascertainable "by the dropping of a life." Under both sub-paras. the existing practice, if any, adopted for ascertaining the loss will, unless an injustice would arise, be adopted.

Power to raise and apply capital for commuting additional rent.

17.—(1) A power authorising a tenant for life of full age, statutory owner, trustee, or other person to apply or direct the application of or raise any money for or in the discharge of the costs, fines, and other sums payable on the renewal of any such lease or underlease shall be deemed to authorise the payment, application, or

raising of money for the commutation of any additional rent made payable by this Act.

Raising and application of money for commutation.

As to "commutation": para. 14 (1), *sup.*, and note thereto. As to applying capital money: S. L. A., 1925, s. 73 (1) (ix). As to raising the money by mortgage: *ib.*, s. 71 (1) (vii) (viii) (ix). As to trustees for sale: L. P. A., 1925, s. 28 (1). As to personal representatives: Ad. of E. A., 1925, s. 39.

This sub-para. primarily refers to express powers given by the trust instrument to raise money to pay fines, &c.

(2) Out of the money so applicable or raiseable, the lessor may discharge any compensation payable to his officer, solicitor, or other agent.

Compensation to lessor's solicitors.

"Lessor" includes a sub-lessor: s. 190 (i), *sup.*

Where the agent is given a yearly salary no compensation can be properly claimed. In ascertaining the compensation regard must be had to the fees which an agent will still obtain under para. 10 (1) (ii), *sup.*, for registering assignments, devolutions, &c. No compensation will be payable for loss of remuneration attributable to work rendered unnecessary: para. 15, *sup.*

(3) If the reversion is settled land, or held on trust for sale, any commutation money shall be treated as capital money or proceeds of sale arising from such land (as the case may require).

Trusts affecting commutation money received.

"Capital money": S. L. A., 1925, s. 117 (1) (ii); under s. 62 (4), *ib.*, the tenant for life can do anything which the lessor, lessee or underlessee is by this Sch. authorised to do. As to trustees for sale: L. P. A., 1925, s. 28; as to personal representatives: Ad. of E. A., 1925, s. 39.

Proceeds arising under a trust for sale may be applied as capital money arising under S. L. A., 1925: see L. P. A., 1925, s. 28 (1).

There need be no accumulation of the income of the commutation money under S. L. A., 1925, s. 79, for it is the capitalised value of rent which would otherwise be payable to the tenant for life.

(4) If the land comprised in the lease or underlease is settled land or held on trust for sale, the commutation money may be paid out of capital money or personal estate (not being chattels real) held on the same trusts as the land.

Payment of commutation out of capital money.

See S. L. A., 1925, s. 73 (1) (ix) (xx); L. P. A., 1925, s. 28 (1); Ad. of E. A., 1925, s. 39.

Notices.

18. The provisions of section sixty-seven of the Conveyancing Act, 1881, shall apply to any notice required or authorised to be given under this Part of this Act or under any provision implied by this Part of this Act.

C. A., 1881, s. 67, is now replaced and amended by L. P. A., 1925, s. 196.

"Under any provision implied": see para. 10, *sup.*

19. Where any lease or underlease to which this Part of this Act applies is registered under the Land Transfer Acts, effect shall be given to the provisions of this Act by making such alterations in the register as may be prescribed under those Acts.

Registered leases and underleases.

The L. T. As. are replaced by L. R. A., 1925.

The long terms, into which perpetually renewable leases are converted, are "legal estates," hence can be registered under that Act; where a perpetually renewable lease is registered before 1926 the long term will be entered on the register on the occasion of the first dealing after 1925: *ib.*, s. 2 (1). As to the rule making power: *ib.*, s. 144 (1) (xxx).

Registered land.

20.—(1) The original or counterpart of any lease or underlease or assignment to which this Part of this Act applies may be deposited at the Central Office of the Supreme Court.

Office copies and searches.

In view of the length of the term, the original or counterpart will in many cases become undecipherable; and see sub-para. (5).

Need for office copies.

"Assignment": see para. 10 (1) (iii), *sup.*; this may be the only available evidence of the lease or underlease.

(2) A separate file of instruments so deposited shall be kept, and any person who furnishes the prescribed evidence to show that he has a sufficient interest in the lease or underlease or reversion expectant thereon may search that file and inspect the lease or underlease or counterpart or assignment, and an office copy thereof shall be delivered to him at his request.

"Prescribed evidence": see sub-para. (6), *inf.*

File of deposited leases, &c.

The term will be got into the person entitled thereto on 1st January, 1926, by L. P. A., 1925, 1st Sch., Pt. II.; S. L. A., 1925, 2nd Sch.

This Sch. will be deemed for the purposes of the construction of the L. P. A., 1925, to have taken effect before that Act: see s. 202 thereof.

Getting in of legal terms.

(3) A copy of an instrument so deposited, with any plan or endorsements thereon, may be presented at any time at the Central Office, and, if found correct, may be stamped as an office copy, and when so stamped shall become and be an office copy.

Thus office copies can be obtained "at any time" provided that a correct copy is furnished. This avoids the delay in bespeaking copies of powers of attorney under the practice which obtained under C. A., 1881, s. 48, reproduced in Jud. A., 1925, s. 219.

Office copies.

The "endorsements" are material: paras. 10 (1) (iii), 14 (2).

(4) An office copy of the instrument so deposited with the plan and endorsements (if any) shall without further proof be sufficient evidence of the contents of the instru-

ment, plan, and endorsements (if any), and of the deposit thereof at the Central Office.

Evidence. The office copies would, independently of this sub-para., have been admissible in evidence: R. S. C., Ord. XXXVII., r. 4.

(5) Where an instrument so deposited has perished or become undecipherable, an office copy thereof may be similarly deposited, and office copies thereof may be issued in lieu of office copies of the original, and the provisions of this section shall apply thereto as if office copies so issued were office copies of the original instrument.

Office copies of office copies. For the need for this, see note to sub-para. (1).

(6) General rules may be made for the purposes of this section prescribing the evidence to be furnished before a search is authorised, regulating the practice of the Central Office, and prescribing, with the concurrence of the Treasury, the fees to be taken therein.

General rules. See Filing of Leases Rules, 1925, and Filing of Leases Fee Order, 1925, in Appendix No. II., Vol. II.

As to rules, directions, &c. to be made by the Minister, see paras. 6 (2), 10 (2), 12 (2) (3) (5) (6), 16, and Renewable Leaseholds Regulations, 1925, in Appendix No. II., Vol. II.

The 16*th Sch. was repealed before it took effect.*

CHAPTER III.

THE LAW OF PROPERTY (AMENDMENT) ACT, 1924.

(15 Geo. 5, c. 5.)

Arrangement of Sections.

Section.

1. Repeals effected by principal Act, p. 108.
2. Amendments of the principal Act, p. 108.
3 *to* 8. *Were repealed before they took effect.*
9. Statutes affected by the principal Act, p. 108.
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11. *Was repealed by the Universities and College Estates Act*, 1925.
12. Short title, commencement, extent, p. 109.

Schedules.

Schedule I. Repeals effected by the Law of Property Act, 1922, p. 109.

Schedule II. Amendments of principal Act, p. 114.

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Schedule IX. Statutes affected by principal Act, p. 117.

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THE LAW OF PROPERTY (AMENDMENT) ACT, 1924.

(15 GEO. 5, c. 5.)

An Act to amend the Law of Property Act, 1922, *and the enactments thereby affected, and to facilitate the consolidation of the law relating to conveyancing and property, settled land, trustees, the registration of pending actions, annuities, writs, orders, deeds of arrangement and land charges, the administration of estates, the registration of title to land and University and College Estates.*

[18th December, 1924.

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Repeals effected by the principal Act.
12 & 13 Geo. 5, c. 16.

1. For the purpose of collecting the repeals effected by the Law of Property Act, 1922 (in this Act referred to as "the principal Act") parts of which are intended to be repealed, it is hereby declared that the enactments set out in the First Schedule to this Act are the enactments which were, to the extent specified in the third column of the said Schedule, repealed by the principal Act.

Repeals in Act of 1922 repeated.

These repeals have been repeated in the L. P. A., 1925; S. L. A., 1925; and Ad. of E. A., 1925.

Amendments of the principal Act.

2. The principal Act shall be amended, in regard to details relating to the enfranchisement of copyholds and the conversion of perpetually renewable leaseholds into long terms, in the manner appearing in the Second Schedule to this Act.

L.P.A., 1922, printed with the amendments.

These amendments have been reprinted in Part VI. and in Schedules XII. and XV. of the L. P. A., 1922, *sup.*, and notes made thereon.

3—8. *Were repealed before they took effect.*

Statutes affected by the principal Act.

9. The enactments mentioned in the Ninth Schedule to this Act are affected by the principal Act in the manner and to the extent specified in that Schedule.

See notes to 9th Sch.

10. The enactments set out in the Tenth Schedule to this Act, being enactments which, as respects England and Wales, are rendered obsolete by the principal Act, are hereby repealed to the extent specified in the third column of that Schedule. Repeal of statutes rendered obsolete.

11. *Was repealed by the Universities and College Estates Act*, 1925.

12.—(1) This Act may be cited as the Law of Property (Amendment) Act, 1924. Short title, commencement, extent.

(2) This Act shall be construed as one with the principal Act, and that Act and this Act may be cited together as the Property Acts, 1922 and 1924.

(3) This Act shall come into operation on the first day of January, nineteen hundred and twenty-six.

(4) This Act extends to England and Wales only.

SCHEDULES.

FIRST SCHEDULE (*a*).

REPEALS EFFECTED BY THE LAW OF PROPERTY ACT, 1922.

Session and Chapter.	Title or Short Title.	Extent of Repeals.
27 Hen. 8, c. 10.	The Statute of Uses.	The whole Act.
22 & 23 Car. 2, c. 10.	The Statute of Distribution.	Sections three and four.
29 Car. 2, c. 3.	The Statute of Frauds.	Section twenty-four.
1 Jac. 2, c. 17.	An Act for reviving and continuance of severall Acts of Parlyament therein mentioned.	Sections five and seven.
11 Geo. 4 and 1 Will. 4, c. 40.	The Executors Act, 1830.	The whole Act.
3 & 4 Will. 4, c. 74.	The Fines and Recoveries Act, 1833.	Section thirty-two, as respects settlements made or coming into operation after the commencement of the principal Act.

(*a*) The repeals in this Sch. are repeated in the consolidating Acts affected.

First Schedule—*continued.*

Session and Chapter.	Title or Short Title.	Extent of Repeals.
17 & 18 Vict. c. 97.	The Inclosure Act, 1854.	The proviso to section eleven, and, in section thirteen, the words "so far as "the same has been apportioned upon "the lands of persons interested and "making applications as aforesaid."
31 & 32 Vict. c. 40.	The Partition Act, 1868.	The whole Act without prejudice to proceedings commenced thereunder before the commencement of the principal Act.
34 & 35 Vict. c. 31.	The Trade Union Act, 1871.	In section seven, the words "not "exceeding one acre."
37 & 38 Vict. c. 78.	The Vendor and Purchaser Act, 1874.	Section one.
38 & 39 Vict. c. 87.	The Land Transfer Act, 1875.	Section two; in section four from "The "Court of Chancery" to the end of the section; in subsection (1) of section eleven the words "for a life "or lives or determinable on a life or "lives"; sections twelve, fourteen, fifteen and sixteen; in paragraph (2) of section eighteen, the words "suc- "cession duty," paragraphs (4) and (5), in paragraph (7) the words "in "cases where there is an occupation "under such tenancies," and the words from "The Commissioners of "Inland Revenue" to the end of the section; in section thirty-four from the words "upon completion of the "registration" to the end of the section; sections thirty-six, thirty-seven, forty-one, forty-four, forty-five, and forty-nine; in section fifty, from the words "is for a life" to the end of the section; section fifty-two; the proviso to section fifty-three; sections sixty-eight and sixty-nine; in section seventy the words "the "vendor or his solicitor in cases where "the applicant is a person who has "contracted to buy such land, and in "all other cases"; paragraphs (3), (4), (7), and (8) of section eighty-three; section eighty-four; in section

First Schedule—*continued.*

Session and Chapter.	Title or Short Title.	Extent of Repeals.
38 & 39 Vict. c. 87—*cont.*	The Land Transfer Act, 1875—*cont.*	eighty-five, the words from "but this "enactment" to the end of the section; sections eighty-seven and eighty-eight; in sections ninety-five and ninety-six the words "subject to "any estates or rights acquired by "registration in pursuance of this "Act"; and subsection (4) of section one hundred and eleven.
39 & 40 Vict. c. 17.	The Partition Act, 1876.	The whole Act, without prejudice to proceedings commenced thereunder before the commencement of the principal Act.
40 & 41 Vict. c. 18.	The Settled Estates Act, 1877.	The whole Act.
44 & 45 Vict. c. 41.	The Conveyancing Act, 1881.	Section twelve; in paragraph (i) of subsection (6) of section fourteen, the words "To a covenant or condition against "assigning, underletting, parting with "the possession, or disposing of the "land leased; or" except in the application of that paragraph to breaches occurring before the commencement of the principal Act, and to cases where the land leased has been assigned, underlet, parted with or disposed of, to a limited company either before or after the commencement; in subsection (3) of section twenty-three the words "affected "under the mortgage deed or under "this Act"; section thirty as respects deaths occurring after the commencement of the principal Act; section forty-one; subsections (4) and (5) of section forty-two and section forty-three, as respects instruments coming into operation after the commencement of the principal Act; subsections (4) and (5) of section forty-five; and section sixty-two.
45 & 46 Vict. c. 38.	The Settled Land Act, 1882.	Subsection (4) of section two, and in paragraph (i) of subsection (10) of that section, the words "also an "undivided share"; in subsection (6) of section two the words "as tenants in "common or" and the words "or for "other concurrent estate or interests";

First Schedule—*continued.*

Session and Chapter.	Title or Short Title.	Extent of Repeals.
45 & 46 Vict. c. 38—*cont.*	The Settled Land Act, 1882—*cont.*	subsection (6) of section four; sections fourteen and nineteen; subsection (3) of section twenty; subsections (1), (2) and (3) of section twenty-four, and in subsection (4), the words "as aforesaid," "in respect "of money actually raised and re- "maining unpaid," "or any undi- "vided share therein," and "or partition"; in subsection (5), the words "or partition" in both places where those words occur, and the words "or an undivided share "wherein"; section twenty-six; subsection (1) of section thirty-seven; in subsection (1) of section thirty-nine, the words "settlement autho- "rises the receipt of capital trust "money of the settlement by one "trustee"; in subsection (2) of section forty-five, the words "a contrary "intention is expressed in the settle- "ment"; paragraph (ii) of subsection (1) of section fifty-eight; section sixty from "and if there are none" to the end of the section, and section sixty-three.
47 & 48 Vict. c. 18.	The Settled Land Act, 1884.	Sections six and seven.
51 & 52 Vict. c. 51.	The Land Charges Registration and Searches Act, 1888.	In section four the words "does not "include an order made by a court "having jurisdiction in bankruptcy "in the exercise of that jurisdiction, "but save as aforesaid."
52 & 53 Vict. c. 36.	The Settled Land Act, 1889.	The whole Act.
53 & 54 Vict. c. 29.	The Intestates' Estates Act, 1890.	The whole Act.
53 & 54 Vict. c. 69.	The Settled Land Act, 1890.	In section nine the words "for building "purposes" and from "and the "rentcharge" to the end of the section; and sections twelve and nineteen.

First Schedule—*continued.*

Session and Chapter.	Title or Short Title.	Extent of Repeals.
56 & 57 Vict. c. 53.	The Trustee Act, 1893.	In paragraph (c) of subsection (2) of section ten, the words "at least "two trustees to perform the trust"; in subsection (1) of section eleven, the words "where there are more "than two trustees if one of them"; and in proviso (e) to subsection (1) of section thirty-five, the words "by the court."
57 & 58 Vict. c. 46.	The Copyhold Act, 1894.	The definition of "tenant" in section ninety-four.
60 & 61 Vict. c. 65.	The Land Transfer Act, 1897.	Part I., as respects deaths occurring after the commencement of the principal Act; subsections (1), (3), (4), (5), (8) and (10) of section six; subsections (1) to (4) of section seven, and the words "act, neglect or default" in subsection (6) of that section; subsection (3) of section eight; in subsection (4) of the same section the words "subject to any "stipulation to the contrary, the pro- "prietor of a registered charge shall "not be entitled to have the custody "of the land certificate or to require "a land certificate to be applied "for"; sections twelve and thirteen; subsection (2) of section fourteen; subsections (1) and (3) of section sixteen; in subsection (1) of section twenty, from "a person shall not" to end of that subsection; subsection (8) of section twenty; in subsection (3) of section twenty-three, the words "but no sum" to "such transfer"; in subsection (1) of section twenty-four the words "or two lives yet to "fall in or to an undivided share "in land"; and subsection (2) of that section.
1 & 2 Geo. 5, c. 37.	The Conveyancing Act, 1911.	Section twelve as respects deaths occurring after the commencement of the principal Act.

Section 2.

SECOND SCHEDULE.

Amendments of principal Act.

Saving of offices of profit from the Crown

1. The following section shall be inserted after section one hundred and forty-two of the principal Act:—

This s. is printed *sup.* immediately after s. 142 of the L. P. A., 1922.

Manorial documents.

2. The following section shall be inserted after section one hundred and forty-four of the principal Act:—

This s. is printed *sup.* immediately after s. 144 of the L. P. A., 1922.

Extinguishment of manorial incidents.

3.—(1) At the end of paragraph (viii) of subsection (1) of section one hundred and thirty-nine of the principal Act the words "On the application of the lord or of at least twenty tenants a general order may be made under this paragraph as respects any manor" shall be inserted.

(2) In section one hundred and forty-two of the principal Act the words "in fee" where they first occur, are hereby repealed.

These amendments are printed in L. P. A., 1922, ss. 139 and 142; see notes to those ss.

Amendments of Schedules XII. and XIII.

4. The Twelfth Schedule to the principal Act is hereby amended as follows:—

(1) In sub-paragraph (b) of paragraph (8) the words "or a mortgagee has been admitted," and "or would have had such right if a mortgagee had not been admitted" are hereby repealed, and, in lieu of the last-mentioned words, the words "otherwise than as mortgagee" shall be inserted;

In the same sub-paragraph the words "(being a trustee)" shall be substituted for "(not being a mortgagee)"; and the words "if any" shall be inserted after "personal representative."

In the same sub-paragraph the words "a better right to be admitted than the devisee or customary heir" shall be substituted for "the best right to be admitted," where those words secondly occur.

(2) The following sub-paragraphs shall be inserted at the end of the said paragraph:—

"(f) If the copyholder in fee is a mortgagee the freehold estate in fee simple shall (subject to the terms of years absolute of any mortgagees) vest in the person entitled to the equity of redemption:

"(g) If a copyholder in fee, or other person entitled to an interest corresponding to a legal estate, is a trustee for

2nd Sched.—*continued.*

a corporation or other person absolutely and beneficially entitled, the freehold estate in fee simple, or other corresponding legal estate (as the case may be) shall vest in the corporation or other person so entitled:

"(h) If a person has, under the Limitation Acts, acquired a customary estate corresponding to a legal estate, then a legal estate corresponding to the customary estate so acquired shall vest in him."

(3) In paragraph 13 of Part II. of the Thirteenth Schedule to the principal Act:—

(a) The words "forfeitures and all other" shall be substituted for "all";

(b) The words "or where the copyhold interest liable to forfeiture is less than a customary fee simple or is subject to a lease binding on the lord twenty per cent. of the annual value of such copyhold interest to be ascertained in such manner as the Minister may determine to be proper" shall be inserted after the words "paragraphs 3 and 4."

The above amendments are printed as part of the L. P. A., 1922, 13th Sch., *sup.*

Amendments of Schedule XV.

5. The Fifteenth Schedule to the principal Act is hereby amended as follows:—

(1) The words "cease or" shall be inserted after "notice shall" in the proviso to sub-paragraph (1) (i) of paragraph 10;

(2) In sub-paragraph (1) of paragraph 12 the words "an amount to be ascertained as hereinafter provided" shall be substituted for "the like amount as would have been payable if this Act had not been passed and the lease or underlease or all successive leases or underleases have been renewed in due course";

(3) For sub-paragraph (2) of paragraph 12 the following sub-paragraph shall be substituted:—

"(2) In default of agreement and unless the Minister, having regard to the practice and other circumstances of the case, otherwise directs, the following provisions shall have effect for the purpose of ascertaining the annual instalments of additional rent:—

"(a) the additional rent shall be ascertained on the basis of the fines and other payments which would have been payable on the occasion of the first renewal after

2nd Sched.—*continued.*

the commencement of this Act, if this Act had not been passed;

"(b) where the lessee or underlessee has a right to renew at different times, the occasion of the first renewal shall be such date as he may, by notice in writing given to the lessor within one year after the commencement of this Act, select from among the dates at which he would have been entitled to renew his lease or underlease had it remained renewable, or, in default of such notice, the last day on which he would have been entitled to renew, regard being had to the date of the last renewal";

(4) In sub-paragraph (3) of paragraph 12 the words "or in default" shall be substituted for "and in default";

(5) In sub-paragraph (5) of paragraph 12 for the words from "dividing the aggregate" to the end of the paragraph, the following words shall be substituted:—

"an actuary, regard being had to the interval or average interval occurring between the dates of renewal and to any circumstances affecting the amount payable on renewal";

(6) In sub-paragraph (6) of paragraph 12 the words "such "per centage as the Minister may generally or in any "particular instance with a view to maintaining any "existing practice, prescribe" shall be substituted for the words "five per cent.";

(7) At the end of sub-paragraph (1) (a) of paragraph 14 the words "or any part thereof" shall be inserted;

(8) In sub-paragraph (1) of paragraph 16 the words "or the "appointment of or instructions to be given to an actuary "under paragraph 12 (5) of this Schedule" shall be inserted after "other agent."

(9) At the end of sub-paragraph (3) of paragraph 16 the following words shall be inserted:—

"For the purposes of this sub-paragraph the compensation to be given for the loss of the said right shall be regulated by the practice (if any) which obtained, before the commencement of this Act, in assessing the value of the said right, unless the Minister otherwise directs."

The above amendments have been printed as part of the L. P. A., 1922, 15th Sch.

The Third to Eighth Schedules were repealed before they took effect.

NINTH SCHEDULE.

Enactments affected.	How affected on the commencement of the principal Act.
1. The Inheritance Act, 1833, as amended by section nineteen of the Law of Property Amendment Act, 1859.	1. Remains in force for the purpose (so far as applicable) of ascertaining the devolution of entailed interests as equitable interests, and of ascertaining the persons who are to take equitable interests as heirs by purchase, but in other respects ceases to apply (save in the case of a lunatic or defective provided for by the principal Act) on intestacies.

A new code for the devolution of real and personal estate on an intestacy is provided by Ad. of E. A., 1925, Pt. IV.

As to the devolution of entailed interests, see L. P. A., 1925, s. 130 (4), and Ad. of E. A., 1925, ss. 45 (2), 51 (4). An equitable interest by the curtesy can still arise; see also S. L. A., 1925, s. 20 (1) (vii). — Entailed interests, devolution of.

As to heirs taking by purchase, see L. P. A., 1925, s. 132; Ad. of E. A., 1925, s. 51 (1). As to the abolition of the rule in *Shelley's Case*, see L. P. A., 1925, s. 131. — Heirs by purchase.

As to the devolution of the real estate of lunatics and defectives, living and of full age on the 1st January, 1926, dying intestate after 1925, see Ad. of E. A., 1925, s. 51 (2). — Lunatics and defectives, devolution on death of.

As to the devolution of the estates of infants dying unmarried after 1925 equitably entitled under a settlement to a fee simple, see Ad. of E. A., 1925, s. 51 (3). — Infants, devolution on death of.

2. The Lands Clauses Acts and other statutes giving powers to make title in case of persons under disability.	2. Take effect as if the references to the disabilities which have been removed had been omitted.

Where title can be made under L. P. A., 1925, or S. L. A., 1925, or Ad. of E. A., 1925, there will be no need to resort to the special powers conferred by the Lands Clauses Acts, though such powers are kept alive: L. P. A., 1925, s. 7 (3); but when practicable those powers must be exercised in the name of the estate owner: *ib.*, s. 7 (4). As a rule, the compensation money will not be paid into Court: *ib.*, s. 42 (7). — Removal of disabilities.

As to infants, see L. P. A., 1925, ss. 19—21, 1st Sch., Pt. III.; S. L. A., 1925, s. 26, 2nd Sch., para. 3. — Infants.

9th Sched.—*continued.*

As to married women, see M. W. P. A's., 1882 to 1908; L. P. A., 1925, ss. 37, 167—170, 1st Sch., Pt. VI. (tenancy by entireties converted into joint tenancy; and see *ib.*, s. 36); S. L. A., 1925, ss. 1 (1) (iv), 20 (1) (x), 25, 4th Sch., para. 16.

Married women.

Lunatics and defectives.

As to lunatics and defectives, L. P. A., 1925, s. 22; S. L. A., 1925, s. 28; T. A., 1925, ss. 36 (1) (9), 44 (ii) (a), 54.

Equitable interests.

A purchaser is entitled to require title to be made without the concurrence of a person entitled to an equitable interest, if it can be so made: L. P. A., 1925, s. 42 (1).

3. The Wills Act, 1837.	3. Takes effect to enable equitable interests to be disposed of subject and without prejudice to the estate and powers of a personal representative.

Wills operate in equity.

A will can no longer pass or create a legal estate in land: Ad of E. A., 1925, ss. 1 and 3; see also L. P. A., 1925, s. 52 (1). Probates and letters of administration are treated as instruments capable of transferring a legal estate to personal representatives: *ib.*, s. 11 (2). Any legal estate of the testator or intestate passes to the personal representatives: Ad. of E. A., 1925, ss. 1 and 3; and can only be transferred by them by an assent in writing or a conveyance: *ib.*, s. 36; though leases at rack rents for not more than three years can be created by parol: L. P. A., 1925, s. 54 (2).

As to the estate and powers of a personal representative, see Ad. of E. A., 1925, Pts. I. and III.

4. The Fines and Recoveries Act, 1833, as amended.	4. Remains in force in regard to dealings with entailed interests as equitable interests.

Disentail of entailed interests.

As to the creation and disentail of entailed interests in real and personal property: L. P. A., 1925, s. 130.

Enrolment.

As to the abolition of enrolment of disentailing assurances: *ib.* s. 133.

Special protectors.

The power to appoint a special protector of the settlement is abolished, for s. 32 of the Fines and Recoveries Act, 1833, is repealed by 1st Sch., *sup.*, as respects settlements made or coming into operation after 1925; this repeal is repeated in L. P. A., 1925, 7th Sch.

Acknowledgments by married women.

Deeds will no longer be acknowledged by married women: L. P. A., 1925, s. 167.

Implied entailed interests.

An infant may take an implied entailed interest under Ad. of E. A., 1925, s. 51 (3).

5. The Small Dwellings Acquisition Act, 1899, and other statutes prescribing the mode of effecting mortgages of land.	5. Take effect as if the modes prescribed were by charge by way of legal mortgage or by demise or sub-demise, but without prejudice to any statutory power to effect mortgages by deposit of documents.

For modes of effecting legal mortgages of land, see now L. P. A., 1925, ss. 85, 86. For a statutory power to mortgage by deposit: Ad. of E. A., 1925, s. 39 (1) (i).

6. All previous statutory provisions relating to the disposition of copyhold or customary lands.	6. Become obsolete.	9th Sched.—*continued.*

As to the abolition of copyhold tenure, see L. P. A., 1922, Pt. V., *sup.*; and as to the abolition of customary modes of assurance: *ib.*, s. 128 (3). Abolition of copyhold tenure.

The mode of disposition will be the same as in the case of ordinary freeholds, but until the manorial incidents have been extinguished documents relating to the legal estate must be produced to the steward and the requirements of L. P. A., 1922, s. 129, complied with. Mode of disposition of enfranchised land.

7. All statutory provisions requiring a remainderman or reversioner to concur in a conveyance by a tenant for life or statutory owner of settled land.	7. Are inoperative as respects the transfer or creation of a legal estate; a consent in writing by the remainderman or reversioner shall be a sufficient compliance with the statutory provision.	

Under S. L. A., 1925, s. 13, a vesting instrument must be executed before a legal estate in settled land can be created or transferred, the object being to keep equitable interests and powers behind the curtain. It will seldom occur, in view of the wide powers given by that Act, that a transaction cannot be carried out by the tenant for life; in any case the Court can authorise the transaction to be effected: *ib.*, s. 64. Vesting instrument creates a curtain.

Other statutory or express powers conferred on a tenant for life are saved: *ib.*, s. 108 (1); and additional powers relating to the settled land, whether conferred on the tenant for life or any other person by the settlement, are made exercisable by the tenant for life: *ib.*, ss. 108 (2), 109. See also L. P. A., 1925, ss. 7 (3) (c), (4); 9 (1) (e) as to the saving of powers to transfer or create legal estates. Additional powers.

The consents in writing of a remainderman, which are made sufficient by the above para. to avoid having to join him in the conveyance (see L. P. A., 1925, s. 42), can be made use of in place of an order of the Court under S. L. A., 1925, s. 64. The consent should be handed over to the purchaser and he should be given a separate acknowledgment of his right to production of the instruments relating to the title of the remainderman, though it may be held that under this para. a purchaser is not concerned to see that the consent is given. For statutes under which the concurrence of the remainderman would have been requisite, see School Sites Act, 1841, s. 2 (4 & 5 Vict. c. 38); Places of Worship Sites Act, 1873, s. 1 (36 & 37 Vict. c. 50). Consent in writing by remainderman.

Section 10.

TENTH SCHEDULE.

Enactments Repealed.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
27 Hen. 8, c. 16.	An Acte conc̃nyng enrolmentes of bargaines & contractes of Landes & Tenementes.	The whole Act (*a*).
31 Hen. 8, c. 1.	An Acte for joynt Ten^{a}nt$\wp$ & Ten^{a}nt$\wp$ in comon.	The whole Act (*b*).
32 Hen. 8, c. 28.	An Acte that Lesez may enjoy their fermes.	The whole Act (*c*).
32 Hen. 8, c. 32.	Joinctenaunt$\wp$ for lif or yeres.	The whole Act (*b*).
34 & 35 Hen. 8, c. 20.	An Acte to embarre fayned recoveries of Landes wherein the Kinges Majestie is in reverc̃on.	The whole Act (*d*).
5 Eliz. c. 26..	An Acte for thenrollem^{t} of Indentures of Bargayne and Sale in the Quenes Ma^{tes} Courtes.	The whole Act (*e*).
13 Eliz. c. 4..	An Acte to make the Landes Tenem̃tes Goodes and Cattalles of Tellers Receavers, etc., lyable to the payment of their Debtes.	The whole Act (*f*).

(*a*) The Statute of Enrolments of bargains and sales is obsolete: L. P. A., 1925, s. 51.

(*b*) There can no longer be partitions between joint tenants or tenants in common, for the land will be held on trust for sale: *ib.*, ss. 34—36, 1st Sch., Pt. IV.; but the trustees for sale can partition: *ib.*, s. 28.

(*c*) This was repealed by the S. E. A., 1856, s. 35, except as to leases made by a lessor in right of his church; the enabling Act is no longer required: L. P. A., 1925, s. 149 (2).

(*d*) This was repealed by mistake and is revived by the Expiring Laws Continuance Act, 1925.

(*e*) This is consequential on the repeal of 27 Hen. 8, c. 16.

(*f*) Obsolete: see Ad. of E. A., 1925, ss. 32, 57.

Tenth Schedule—*continued.*

Session and Chapter.	Title or Short Title.	Extent of Repeal.
27 Eliz. c. 3..	An Act for the explanacion of the Statute made Anno xiij of the Queenes Majesties Reigne intituled, An Act to make the Landes Tenementes Goodes and Chattels of Tellors Receivors, etc., liable to the paiment of their Debtes.	The whole Act (*f*).
10 Will. 3, c. 22.	An Act to enable Posthumus Children to take Estates as if born in their Fathers Life time.	The whole Act (*g*).
4 & 5 Anne, c. 3.	An Act for the Amendment of the Law and the better Advancement of Justice.	Sections twenty-one and twenty-seven (*h*).
10 Anne, c. 28.	The Pleading Act, 1711.	The whole Act (*i*).
13 Anne, c. 6.	The Mortuaries (Bangor, etc.) Abolition Act, 1713.	The whole Act (*k*).
25 Geo. 2, c. 39.	The British Subjects Act, 1751.	The whole Act (*l*).
11 Geo. 4 & 1 Will. 4, c. 65.	The Infants' Property Act, 1830.	The whole Act (*m*).

(*f*) Obsolete: see Ad. of E. A., 1925, ss. 32, 57.

(*g*) This is consequential on the abolition of legal contingent remainders, which now take effect as equitable interests: L. P. A., 1925, s. 1. See also Ad. of E. A., 1925, s. 55 (2), as respects posthumous children taking under an intestacy.

(*h*) Obsolete (Pickering, 4 Anne, c. 16): s. 21 relates to warranties in connexion with ransacking conveyances; s. 27 relates to actions of account between joint tenants and tenants in common. In these cases the land will be held on trust for sale, or if settled by joint tenants as trustees.

(*i*) This is consequential on L. P. A., 1925, s. 51 (enrolment of copies of bargains and sales): see Pickering, 10 Anne, c. 18.

(*k*) Obsolete (Pickering, 12 Anne, stat. 2, c. 6).

(*l*) Obsolete, related to descents cast: see Ad. of E. A., 1925, Pt. IV.

(*m*) The Infants' Property Act, 1830, so far as not already repealed (see

Tenth Schedule—*continued.*

Session and Chapter.	Title or Short Title.	Extent of Repeal.
3 & 4 Will. 4, c. 74.	The Fines and Recoveries Act, 1833.	Sections two to fourteen (*n*), sixteen (*o*), eighteen (*p*), twenty-nine to thirty-one (*q*), forty-one (*r*), forty-six (*r*), fifty to fifty-four (*s*), in section fifty-eight from "and in "regard to the enrolment" to "shall be effected" (*s*), and sections fifty-nine (*r*), sixty-six (*s*), in section seventy-one the words "and "shall in the case of lands to be "sold as aforesaid being held by "copy of court roll" to "copyhold, "and were actually purchased and "settled," from the words "which "shall have no operation under this "Act" to "after the execution "thereof," the words "and com- "pleted by enrolment" and the words "not held by copy of court "roll" (*r*), sections seventy-three (*t*), seventy-four (*r*), seventy-six (*s*), in section seventy-seven (*t*) the words from "save and except that "no such disposition" to the end of that section, sections seventy-nine to ninety (*t*), and in section ninety-one the words "or of making a "surrender of lands held by copy of "court roll" (*s*).

16 & 17 Vict. c. 70 and S. L. R. A., 1873), is obsolete as respects copyholds: L. P. A., 1922, Pt. V., and 12th Sch., and is superseded as respects leases and surrenders by S. L. A., 1925, s. 26; as to renewable leases, see L. P. A., 1922, 15th Sch.; an infant is not capable of being an estate owner: L. P. A., 1925, ss. 1 (6), 205 (1) (v). The Act is also superseded as respects maintenance by T. A., 1925, ss. 31 and 57.

(*n*) The F. and R. A., 1833, ss. 2 and 3 (abolition of fines), obsolete: L. P. A., 1925, s. 51. *Ib.*, ss. 4—6 (ancient demesne), obsolete: L. P. A., 1922, s. 128 (3). *Ib.*, ss. 7—14 are no longer required: L. P. A., 1925, ss. 44 (1), 51.

(*o*) *Ib.*, s. 16 (married women tenants in tail *ex provisione viri* before 1834): obsolete.

(*p*) *Ib.*, s. 18 (unbarrable estates tail under 34 & 35 Hen. 8, c. 20, and tenants in tail after possibility of issue extinct), was repealed by mistake and is revived by the Expiring Laws Continuance Act, 1925.

(*q*) *Ib.*, ss. 29—31, relate to dispositions before 1834; there can be no bare trustee within s. 31: see L. P. A., 1925, 1st Sch., Pt. II.

(*r*) *Ib.*, ss. 41, 46, 59, 71 part, 74 (enrolments): see L. P. A., 1925, s. 133.

(*s*) *Ib.*, ss. 50—54, 58 part, 66, 71 part, 76, 77 part, 91 part (copyholds): see L. P. A., 1922, Pt. V.

(*t*) *Ib.*, ss. 73, 77 part, 79—90 (acknowledgments): see L. P. A., 1925, s. 167.

Tenth Schedule—*continued.*

Session and Chapter.	Title or Short Title.	Extent of Repeal.
2 & 3 Vict. c. 11.	The Judgments Act, 1839.	Sections ten and eleven (*u*).
8 & 9 Vict. c. 106.	The Real Property Act, 1845.	Section eight (*v*).
20 & 21 Vict. c. 57.	The Married Women's Reversionary Interests Act, 1857.	In section one the words "nor unless "the deed be acknowledged by her "as hereinafter directed" and section two (*w*).
23 & 24 Vict. c. 38.	The Law of Property Amendment Act, 1860.	The whole Act, except sections six and eight (*x*).
23 & 24 Vict. c. 127.	The Solicitors Act, 1860.	In section thirty the words from "and "every appointment" to "married "women under that Act" and the words "or appointment" wherever they occur, and in section thirty-one the words from "and the "officer of the Court of Common "Pleas" to "for taking the said acknowledgments" and the words "and appointments" wherever they occur (*y*).
40 & 41 Vict. c. 33.	The Contingent Remainders Act, 1877.	The whole Act (*z*).
42 & 43 Vict. c. 78.	The Supreme Court of Judicature (Officers) Act, 1879.	In Schedule I. the words "Registrar of Certificates of acknowledgments of deeds by married "women" (*a*).

(*u*) Judg. A., 1839, ss. 10 and 11 (protection of purchasers against Crown debts), obsolete: L. C. A., 1925, Pt. III.; L. P. A., 1925, s. 195.

(*v*) R. P. A., 1845, s. 8 (contingent remainders): see L. P. A., 1925, s. 1.

(*w*) See L. P. A., 1925, s. 167.

(*x*) S. 6 (waiver of conditions) and s. 8 (concealment of deeds), repealed by L. P. A., 1925, 7th Sch. The important s. 7 (*scintilla juris* amendment of the Statute of Uses) is included in the repeal in the text. *Semble* s. 13 (limitation of actions as respects personal estate of intestate) also repealed, is superseded by T. A., 1888, s. 8, in view of Ad. of E. A., 1925, s. 46.

(*y*) See L. P. A., 1925, s. 167.

(*z*) See L. P. A., 1925, s. 1.

(*a*) See L. P. A., 1925, s. 167 (abolition of acknowledgments).

Tenth Schedule—*continued.*

Session and Chapter.	Title or Short Title.	Extent of Repeal.
44 & 45 Vict. c. 68.	The Supreme Court of Judicature Act, 1881.	Section twenty-six (*a*).
51 & 52 Vict. c. 43.	The County Courts Act, 1888.	Section one hundred and eighty-four (*a*).

ELEVENTH SCHEDULE.

Repealed by the Universities and College Estates Act, 1925.

(*a*) See L. P. A. 1925, s. 167 (abolition of acknowledgments).

CHAPTER IV.

New Law under the Law of Property Act, 1925 (Summary).

The general effect of this Act in relation to the other consolidating Acts is worked out in the Introductory Chapter and in Chapters I. and II. of Prideaux, 22nd ed., hence this chapter merely calls attention to the new law contained in this Act.

Consolidation.

The L. P. A., 1925, consolidates, with amendments, most of the enactments relating to conveyancing and property, save those relating to settled land (S. L. A., 1925), trustees (T. A., 1925), administration of estates and intestacy (Ad. of E. A., 1925), land charges (L. C. A., 1925) and registered land (L. R. A., 1925).

Main objects.

The main objects of the amendments of the law in the L. P. A., 1925, are:—

Reduction of investigation.

(1) To reduce to a minimum the requisite investigation and re-investigation of title on sales, mortgages and other dealings for value relating to unregistered land.

Facilitating the making of title.

(2) To secure that in all cases there shall be an owner of full age capable of dealing with the fee simple or term of years absolute in favour of a person dealing for value.

Alteration of effect of notice.

(3) To free a purchaser of land from the unnecessary and inconvenient results of notice of equities.

Assimilation.

(4) To assimilate, so far as practicable, the law of real and personal property by making use of the most convenient rules formerly applicable to either class of property.

Basis of conveyancing.

The basis of conveyancing under the Act rests on the statutory new "legal estates," that is to say, the "estate owner" of a fee simple or term of years absolute will be the person to make title. Powers are relegated to the background. And see s. 9 as to dispositions operating as conveyances by an estate owner. Legal estates will be the proper subject for registration in the deeds registries: s. 11.

Part I.—Legal Estates and Equitable Interests.

Legal estates.

Part I. of the L. P. A., 1925, is entirely new; it effects a fundamental reform by reducing legal estates in land to two, namely, a fee simple absolute in possession, and a term of years absolute: s. 1 (1). A fee simple liable to be divested under certain statutory provisions is a fee simple absolute for the purposes of the Act: s. 7; and a term of years absolute means a term of years (in possession or reversion) subject or not to another legal estate, and either certain or liable to determination by notice

or in any other event, other than the dropping of a life or the determination of a determinable life interest: s. 205 (1) (xxvii). The principle affecting satisfied terms is extended to leaseholds: ss. 5, 116 (cesser of mortgage terms); 1st Sch., Pt. II., para. 1.

Legal interests and charges.

There are also allowed to subsist and are included in the definition of "legal estates" the following legal interests and charges:—Easements and rentcharges held for estates corresponding to the fee simple or term of years absolute; land tax, tithe rentcharge and similar charges; a charge by way of legal mortgage (s. 87); and rights of entry in respect of a legal term or annexed to a legal rentcharge: s. 1 (2). As to the vesting of legal estates: 1st Sch., Pts. II. to VIII.; S. L. A., 1925, 2nd Sch.

Equitable interests.

All other interests and charges in or over land (see also 1st Sch., Pt. I.) take effect as equitable interests: s. 1 (3); they are to be given effect to by the estate owner (s. 3); as to their creation and disposition, see s. 4.

Undivided shares.

In particular, legal estates in undivided shares in land can no longer exist: s. 1 (6). Land held in undivided shares in possession is vested in trustees for sale; the beneficial interests are made to attach to the proceeds of sale, and to the rents and profits until sale: ss. 34—38; 1st Sch., Pts. IV. and V.; as to settled land, see S. L. A., 1925, ss. 26 (4) (5), 36. A contract to convey an undivided share is shifted to the corresponding share in the proceeds of sale: L. P. A., 1925, s. 42 (6); as also is a disposition purporting to make a settlement of an undivided share: s. 34 (4). But an easement can be held in common: s. 187 (2). As to party structures, see s. 38, 1st Sch., Pt. V.

Joint tenancies.

There is nothing to prevent tenants for life of full age, trustees for sale or personal representatives from holding as joint tenants. Where, however, a legal estate in land (not being settled land) is beneficially limited to or held in trust for any persons as joint tenants, it is held on trust for sale: L. P. A., 1925, s. 36.

Infants.

Similarly, where an infant is beneficially entitled to a legal estate in possession (as opposed to a life interest) jointly with another person of full age, a trust for sale is created: L. P. A., 1925, s. 19 (2); 1st Sch., Pt. III., para. 2; but if two or more infants are so entitled jointly, the land is settled land until one of them attains full age: S. L. A., 1925, s. 26 (4). If an infant and a person of full age are entitled for life, the person of full age is the tenant for life of the entirety: *ib.*, s. 19 (3). Severance of a joint tenancy in a legal estate is prohibited: L. P. A., 1925, s. 36 (2) (3), but without prejudice to the right of a joint tenant to release to his co-owners.

Tenancies by entireties.

Without affecting beneficial interests, tenancies by entireties

are converted into joint tenancies: L. P. A., 1925, 1st Sch., Pt. VI., and the land will accordingly be held on trust for sale.

Infants cannot be estate owners.

An infant can no longer hold a legal estate, whether beneficially (s. 1 (6)) or as trustee or mortgagee (ss. 19, 20), or as estate owner of settled land: S. L. A., 1925, ss. 26, 27; existing legal estates of infants are made to vest in the statutory owners or tenant for life of full age: L. P. A., 1925, 1st Sch., Pt. III.; S. L. A., 1925, 2nd Sch., para. 3. Married infants can give receipts for income: L. P. A., 1925, s. 21.

Vesting of legal estates.

Forms.

The notes show how the vesting provisions in the 1st Sch. to the L. P. A., 1925, and the 2nd Sch. to the S. L. A., 1925, operate on the 1st January, 1925; these transitional provisions should be carefully studied as well as the new forms of instruments given in the 5th Sch.

Operation of powers.

The Statute of Uses is repealed (7th Sch.), and powers created before 1926 and operating thereunder can no longer pass a legal estate. Powers of appointment and powers to convey or charge land, with certain exceptions, all operate in equity: s. 1 (7). The exceptions are the powers vested in a legal mortgagee (ss. 88, 89, 101), or an estate owner in right of his estate, and exerciseable by him or by his attorney in his name and on his behalf. Further, the effect of certain statutory powers (s. 7 (3)), and certain legal powers of leasing (s. 8), and of vesting declarations and vesting instruments (s. 9) are saved.

Legal estates subsisting on 1st January, 1926.

A new start is made in regard to "legal estates" which are vested, by 1st Sch., Pts. II.—VIII., and S. L. A., 1925, 2nd Sch., in the persons of full age who, having regard to the new law, ought to hold them. In the case of encumbered estates, the owner of the equity of redemption acquires the fee simple or the term of years absolute, while the mortgagees are given mortgage terms. Land vested in trustees for sale remains vested in the trustees: 1st Sch., Pt. II., para. 3. If a purchaser's contract is still pending, there must still be a conveyance to give effect to it: *ib.*, para. 7 (j).

Mortgagors and mortgagees.

Overreaching equitable interests.

The conveyancing practice by which, on title being made by trustees for sale, or a mortgagee, or personal representative, or under an order of court, the purchaser was freed from equities affecting the estate which were capable of being overreached by the conveyance, receives statutory amplification: L. P. A., 1925, s. 2 (1). Further, special powers are conferred to create a trust for sale of land (not being settled land) so as to overreach equitable interests: s. 2 (2). Trustees for sale are given the Settled Land Act powers: s. 28, including the overreaching powers, and those incidental to sales, &c., hence can, *e.g.*, under S. L. A.,

1925, s. 50, deal with surface and minerals apart, without an order of the court.

Abstracts.

Abstracts will not include documents relating to interests and powers overreached: s. 10, and 6th Sch., where epitomes of abstracts of title are given.

If there were no stock registers, even though a purchaser were not concerned with equities affecting stock, he would have to investigate the transfers, probates and letters of administration for some years past.

Similarly in the case of unregistered land, a purchaser must investigate past conveyances and leases of legal estates, legal mortgages, grants of legal easements and rentcharges, probates, letters of administration and assents in writing given by personal representatives; but he will not generally be concerned with equitable interests under settlements or wills.

Public and private conveyancing.

Herein lies the distinction between public and private conveyancing.

Matters which affect a purchaser, including a lessee or mortgagee, are public, all else can be put behind a curtain.

Protection of purchasers as respects trusts for sale.

Provisions are made protecting a purchaser as respects appointments of new trustees for sale (s. 24), the postponement of sale (s. 25), the consents to the execution of a trust for sale (s. 26), and the trusts of the proceeds of sale (s. 27). Where capital money arises, the proceeds of sale or other capital money must be paid to or applied by the direction of not fewer than

Number of trustees.

two trustees, except where the trustee for sale is a trust corporation (defined s. 205 (1) (xxviii)), or is a sole personal representative: s. 27 (2); Ad. of E. A., 1925, s. 39. Wherever there is a life interest or a minority there will, however, be at least two personal representatives: *ib.*, s. 12; Jud. A., 1925, s. 160; Ad. of E. A., 1925, ss. 22—24; S. L. A., 1925, s. 94.

Death duties.

In order to discharge a purchaser from liability for charges for death duties, the personal representative is made accountable for duties leviable on land which devolves on him, and the estate owner (other than a purchaser acquiring a legal estate free from the charge) is rendered accountable for all duties leviable in respect of his estate in the land, or any interest therein capable of being overreached by him: s. 16. This enables the duties to be overreached, unless the charge is registered as a land charge: s. 17.

Enforcement of equities.

The estate owner, trustees for sale, or personal representatives, are bound to give effect to the equitable interests: s. 3. See also as to settled land: S. L. A., 1925, s. 16.

Protection of beneficiaries.

Trustees for sale must, so far as practicable, give effect to the wishes of their beneficiaries, of full age, interested in possession,

or of the majority in value of them: s. 26 (3). In lieu of the right to partition, or sale in lieu of partition under the Partition Acts, which are repealed, a statutory partition by the trustees for sale, with requisite consents, is substituted: s. 28 (3). The powers of management (s. 28 (1)) may be delegated to a beneficiary of full age entitled in possession: s. 29.

The court in relation to trusts for sale.

If the trustees for sale refuse to act or a consent cannot be obtained the court has power to give effect to the proposed transaction: s. 30.

The law relating to trusts for sale is collected in ss. 23—33.

Husband and wife.

A husband and wife will be treated as two persons for acquiring property: s. 37.

Lunatics.

Conveyances on behalf of lunatics will be made in their names: s. 22.

Part II.—Contracts, Conveyances and other Instruments.

Contracts.

The enactments as to contracts are set out in ss. 40—50.

(a) The provisions of s. 42 enable a purchaser to insist upon obtaining the legal estate, and to title being made in the best way.

(b) Rights are conferred on a purchaser in respect of cancellation of registered entries: s. 43.

(c) Thirty years is substituted for forty years as the statutory length of title in ordinary cases: s. 44 (1).

(d) Purchasers of land formerly affected by manorial incidents cannot call for the title of the lords of manors entering into compensation agreements or giving a receipt for compensation money: s. 44 (2).

(e) A vendor may retain certain instruments relating to subsisting trusts: s. 45 (9).

(f) The Lord Chancellor may prescribe statutory forms of contracts and conditions of sale; they may be prescribed so as to apply to contracts by correspondence unless a contrary intention is expressed: s. 46. See Appendix No. III., Vol. II., for the conditions of sale prescribed.

(g) A purchaser, on the usual conditions, becomes entitled to the benefit of insurances against damage to the property: s. 47.

(h) A purchaser, lessee or underlessee cannot be prevented from employing his own solicitor: s. 48.

(i) The court has power to direct that a deposit shall be repaid: s. 49.

(j) Wider powers are given to the court to discharge incumbrances on payment into court: s. 50.

Conveyances and other instruments.

Provisions relating to conveyances and other instruments are set out in ss. 51—75.

(a) A conveyance will operate to pass the possession without entry: s. 51. See also as to leases: s. 149.

(b) Deeds may be described according to their nature: s. 57.

(c) Words of limitation are not required: s. 60.

(d) Documents can be shortened by relying on the statutory definitions of "month" and "person"; the singular will include the plural, the masculine will include the feminine, and *vice versâ*: s. 61.

(e) Reservations of legal estates operate without execution by the grantee: s. 65.

(f) An estate owner may give legal confirmation to past transactions: s. 66.

(g) A person may convey to himself: s. 72.

(h) Deeds must be signed, and sealing alone is not sufficient: s. 73.

(i) In favour of purchasers, corporation deeds attested in a prescribed manner are valid: s. 74; and provisions are made as to the execution by a person as attorney of a corporation, or by an official on behalf of a corporation under a power of attorney.

Covenants.

Ss. 76—84 relate to covenants; see also s. 6 as to lessor's and lessee's covenants.

(a) New covenants for title are implied in a mortgage of freeholds subject to a rent, and in a conveyance by a receiver of a defective. The covenants for title may be implied in an assent.

(b) The usual covenants are implied in conveyances subject to rents: s. 77. The usual powers of distress and receipt of rents in such cases are conferred by s. 190.

(c) No special words will be required when framing covenants relating to land, whether the covenants are restrictive or relate to something not in existence at the date of the covenant. Covenants running with the land will affect, and be enforceable by, the successors in title: ss. 78—80. The use of the word "heirs" or "assigns" will not be necessary.

(d) Covenants made after 1925 with two or more persons jointly will also take effect as if made with each of them: s. 81.

(e) Covenants by a person with himself or others will take effect as if made with the others: s. 82.

(f) Power is given for one or more official arbitrators to discharge or modify restrictive covenants: s. 84.

Part III.—Mortgages, Rentcharges and Powers of Attorney.

Ss. 85—100 relate to mortgages. Mortgages.

(a) Legal mortgages of land are only capable of being effected either by demise or sub-demise, or by a new method, a "charge by way of legal mortgage"; a purported conveyance of the fee simple or assignment of the term of years absolute is made to take effect as a demise or sub-demise, subject to cesser on redemption: ss. 85, 86, and 1st Sch., Pts. VII. and VIII., converting existing mortgages into mortgages by demise or sub-demise. This enables the fee simple or head term to be taken by the mortgagor, the true owner. The former defects of mortgages by demise no longer apply, for the mortgagee is given the right to possession of documents (ss. 85, 86), the right on realisation to vest the fee simple or head term in the purchaser (ss. 88 (1), 89 (1)), and the right to acquire the fee simple or head term by foreclosure or under the Limitation Acts (ss. 88, 89), the only exception being in the case of a mortgage of leaseholds where the mortgage term does not comprise the whole of the land comprised in the leasehold term, and the rent, being of money value, has not been apportioned: s. 89 (6). A licence to mortgage by sub-demise must not be unreasonably withheld: s. 89 (1).

The new class of security, the charge by way of legal mortgage, gives the mortgagee the same protection, powers and remedies as if a mortgage term were vested in him: s. 87. The position of mortgagees by demise or sub-demise had been worked out with care; when this was done it was a simple matter to describe the operation of a legal charge by reference to the effect obtained by a mortgage by demise or sub-demise. Charges by way of legal mortgage.

(b) On realisation of equitable mortgages of land, the court may make a vesting order to pass the legal estate: s. 90.

(c) The right to tack is abolished, save as respects further advances made by arrangement with subsequent mortgagees, or without notice of a subsequent mortgage, or under an obligation: s. 94. The registration of a mortgage as a land charge, or in a local deeds registry, will not operate as notice postponing the Tacking.

charge unless the registration was in force when the original advance was made, or when the last search was made: *ib.*

Priorities.

(d) Legal mortgages, not protected by a deposit of documents, will rank according to date of registration as land charges, except where the land is registered, or within the jurisdiction of a local deeds registry, and a memorial is registered. These "puisne mortgages," even when made before 1926, should be registered as land charges in order that they may become effective legal mortgages: 1st Sch., Pt. VII., s. 6; Pt. VIII., s. 5; L. C. A., 1925, s. 10 (1), Class C (7). This system of registration is required because there can now be a succession of legal mortgages of freeholds as well as of leaseholds; it places these mortgages on a secure footing.

(e) The powers of a mortgagor and mortgagee in possession to grant leases and accept surrenders are extended: ss. 99, 100. These powers may be conferred by agreement; the mortgagee may delegate the powers to a receiver: *ib.*

(f) Money received by a receiver is applicable, if the mortgagee so directs in writing, in or towards discharge of principal: s. 109.

(g) Trusts of mortgage debts are now kept off the title, notwithstanding notice: s. 113.

(h) Short forms of transfers, and reconveyances by endorsed receipts, are provided for: ss. 114, 115.

Rentcharges.

Ss. 121, 122 relate to rentcharges. The remedies for recovery are amended: s. 121. Rentcharges may now be created out of another rentcharge: s. 122.

Powers of attorney.

Ss. 123—129 relate to powers of attorney. Such powers made after 1925, and relating to land, must be filed: s. 125; Jud. A., 1925, s. 217. A power of attorney may be given to a purchaser and the persons deriving title under him, instead of merely to him and his substitutes: s. 128.

Part IV.—Equitable Interests and Things in Action.

Equitable interests.

Ss. 130—138 relate to equitable interests.

(a) Entailed interests may be created by way of trust in personal estate: s. 130.

(b) The rule in *Shelley's case* is abolished; a gift to "heirs" takes effect as a gift to the heirs as purchasers: ss. 131, 132.

(c) Disentailing assurances made after 1925 need not be enrolled: s. 133.

(d) The statutory restriction on executory limitations on failure of issue is extended to property generally: s. 134.

(e) The law as to priority of dealings with equitable things in action is applied to dealings with equitable interests in land, capital money and securities representing capital money; notice in writing must be given to the Settled Land Act trustees of the settlement, the trustees for sale, or the estate owner, as the case may be: s. 137.

Some of the difficulties in connexion with giving notice are met: *ib.* In order to lighten the duties of trustees, power is given to nominate a trust corporation to receive notices and keep a register of them: s. 138.

Part V.—Leases and Tenancies.

Leases and tenancies.

Ss. 139—154 relate to leases and tenancies.

(a) The court may give relief to a lessee in respect of notices relating to internal decorative repairs: s. 147.

(b) An *interesse termini* can no longer subsist: s. 149 (1).

(c) Terms of years take effect from the date fixed for commencement, without entry: s. 149 (2).

(d) Terms at a rent or in consideration of a fine will be void unless they take effect within twenty-one years from the date of demise: s. 149 (3). Contracts to create a term to commence at a later date are void: *ib.*

(e) A legal term may take effect in reversion expectant on a longer term: s. 149 (5).

(f) A lease, at a rent or in consideration of a fine, for lives or for years terminable with life is converted into a legal estate consisting of a term for ninety years terminable on either side by notice: s. 149 (6).

(g) A long term, where the rent did not exceed 1*l.*, and has not been collected or paid for twenty years, may, after 1930, be enlarged: s. 153 (4).

(h) The extension of the meaning of "lease" by s. 154 is important in reference to the old law reproduced in this part of this Act.

Part VI.—Powers.

Powers.

Ss. 155—160 relate to powers.

Protection is given to purchasers claiming under appointments void as a fraud on the power, but only to the extent of the interest to which the appointee was entitled in default of appointment, and if the appointee is twenty-five years of age or over, and the purchaser is without notice of the fraud or of circumstances from which the fraud might have been discovered: s. 157.

Part VII.—Perpetuities and Accumulations.

Perpetuities.

Ss. 161—163 relate to perpetuities.

Double possibilities.

The so-called double possibility rule, or the rule in *Whitby* v. *Mitchell*, 1890, 44 Ch. D. 85, is abolished; this only applied to land; this is an assimilation reform: s. 161.

Restrictions on perpetuity rule.

The doubts whether the rule against perpetuities applied to remedies for recovering certain rentcharges, and to the grant and reservation of certain rights are removed: s. 162.

Validation of certain gifts.

Gifts which would be rendered void, because an age exceeding twenty-one years has been fixed for vesting, take effect as if the age of twenty-one years had been fixed: s. 163.

Accumulations.

Ss. 161—166 relate to restrictions on accumulations.

Accumulations during a minority under a statutory power or the general law are not to be taken into account in calculating the statutory periods: s. 165.

The special restrictions on accumulation of money for the purchase of land do not apply if the money is "capital money": s. 166 (2).

Part VIII.—Married Women and Lunatics.

Married women.

Ss. 167—170 relate to married women. Dispositions by them will no longer have to be acknowledged: s. 167.

Doubts as to their position when acting as trustees have been removed: s. 170.

Lunatics.

The court in lunacy has power to settle the beneficial interest of a lunatic or defective: s. 171. By this means it is possible to remove any injustice which might arise because of the change in the law of intestacy: see Ad. of E. A., 1925, s. 51.

Part IX.—Voidable Dispositions.

Voidable dispositions.

Ss. 172—174 relate to voidable dispositions. Protection against invalidity of a conveyance made with intent to defraud creditors is given to a purchaser for valuable or good consideration, and in good faith: s. 172 (3); savings are made as respects disentailing assurances and the law of bankruptcy: s. 172 (2). These provisions are declaratory to avoid doubts.

Reversions at an undervalue.

The definition of "reversionary interest" in s. 174 removes a doubt.

Part X.—Wills.

Wills.

Ss. 175—179 relate to wills.

Contingent devises.

Specific and residuary contingent devises now carry the intermediate income, thus being assimilated to contingent or residuary bequests: s. 175.

Will of a tenant in tail.

A tenant in tail in possession of full age is enabled to dispose of entailed property: s. 176.

Will before marriage.

A will in contemplation of marriage is not revoked by that marriage: s. 177.

Powers of disposition by a bastard.

A bastard is expressly authorised to make a will of real property: s. 178.

Prescribed clauses.

The Lord Chancellor may prescribe forms to be incorporated in wills: s. 179; for the forms, see Appendix No. IV.

Part XI.—Miscellaneous.

Miscellaneous matters.

Ss. 180—189 relate to miscellaneous matters.

Corporations.

(a) The devolution of property of corporations sole and dealings while a vacancy exists are dealt with by s. 180.

(b) On the dissolution of a corporation the court may re-create and vest any legal estate thereby determined: s. 181.

Commorientes.

(c) A new presumption of survivorship, in order of seniority, is created for purposes affecting title: s. 184.

Rights of pre-emption.

(d) Rights of pre-emption are declared to be capable of release: s. 186.

Legal easements.

(e) Legal easements enure for the benefit of the land to which they are intended to be annexed: s. 187.

Division of chattels.

(f) The court may direct division of chattels among any persons entitled in undivided shares: s. 188.

Bills of sale.

(g) Powers of distress for indemnity against a rent do not create a bill of sale: s. 189.

Rents.

Ss. 190—192 relate to rents.

Conveyances, subject to remedies implied.

S. 190 gives the remedies for non-payment of rent or breach of covenant, usually incorporated in conveyances, subject to a rent not legally apportioned.

Apportionment and redemption.

Power is given to the Minister of Agriculture and Fisheries to order the apportionment and redemption of rents: s. 191.

Commons, rights of public.

The public are given limited rights over commons and waste lands: s. 193; and a landowner may declare any land to be subject to the s.

Obstructions on.

Restrictions are imposed on erecting fences, &c. on commons: s. 194.

Judgments.

The law as to judgment debts is consolidated: s. 195. As to writs of *elegit*: 1 Prid., 22nd ed., Ch. VI.; Goodeve R. P., 5th ed., 373.

Notices.

The statutory regulations respecting notices are applied to notices required by any instrument affecting property: s. 196 (5).

Registration in Middlesex and Yorkshire.

Registration of a memorial in a local deeds registry of an instrument transferring or creating a legal estate or charge by way of legal mortgage is (without prejudice to further advances, protected under s. 94) to operate as notice: s. 197.

Effect of registration under L. C. A., 1925.

Registration under the L. C. A., 1925 (see also s. 205 (3)), is also to operate as notice in like manner: s. 198. It results that purchasers of a legal estate will be bound to make searches in these registers. A purchaser, however, is protected by s. 199, by which he is not to be prejudiced by notice of any instrument or matter capable of registration under the L. C. A., 1925, which is void or not enforceable against him by reason of non-registration.

Constructive notice.

Consequential amendments are made as respects constructive notice: s. 199 (1) (i).

Part XII.—Construction, Jurisdiction, and General Provisions.

Advowsons.

The Act applies to advowsons and other incorporeal hereditaments, with a special saving as to advowsons: s. 201 (2). See definition of "hereditament" in s. 205 (1) (ix).

Copyholds and perpetually renewable leaseholds.

The enfranchisement of copyholds, and conversion into long terms of perpetually renewable leaseholds and leases for lives, are deemed to have been effected immediately before the commencement of the Act: s. 202.

Jurisdiction.

The jurisdiction of the court is dealt with by s. 203.

General definitions.

General definitions are given in s. 205 (1); while sub-ss. (2) and (3) relate to matters of construction.

Repeals.

Special provision is made as to the effect of repeals and of references in documents to repealed enactments: s. 207.

The Crown.

The Crown is bound subject to the provisions in s. 208.

The transitional provisions.

The 1st Sch., Pt. I., relates to the conversion, on 1st January, 1926, of estates which cannot subsist as legal estates into equitable interests; while Pts. II. to VIII. (see also S. L. A., 1925, 2nd Sch.) show the persons who are to take legal estates on that date.

Implied covenants.

The 2nd Sch. sets out the covenants which are or can be implied in conveyances, &c.

New forms of instruments.

The 3rd to the 5th Schedules supply new forms to show the lines on which instruments will be prepared under the new practice.

Epitomes for illustrating the principles.

Epitomes of abstract are given in the 6th Sch.; these show, perhaps more clearly than could be done by any other method, how the general principles are translated into practice.

CHAPTER V.

THE LAW OF PROPERTY ACT, 1925.
(15 Geo. 5, c. 20.)

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THE LAW OF PROPERTY ACT, 1925.

(15 GEO. 5, c. 20.)

An Act to consolidate the enactments relating to Conveyancing and the Law of Property in England and Wales.

[9th April, 1925.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PART I.

GENERAL PRINCIPLES AS TO LEGAL ESTATES, EQUITABLE INTERESTS AND POWERS.

Legal estates and equitable interests.

1.—(1) The only estates in land which are capable of subsisting or of being conveyed or created at law are—

(a) An estate in fee simple absolute in possession;

(b) A term of years absolute.

"Legal estates."

Thus legal estates are reduced to the fee simple absolute in possession (for the meaning of "possession," see s. 205 (1) (xix), *inf.*, which shows that the estate may be subject to a lease) and "terms of years absolute," as to meaning of which see, *inf.*, s. 205 (1) (xxvii). "Legal estate" is defined in s. 205 (1) (x).

"Land."

"Land" is defined, *ib.*, sub-s. (ix); as to "incorporeal hereditaments," see s. 201, *inf.*

Possession by a mortgagee, abolition of legal remainders.

If a mortgagee is in possession or takes possession, this does not convert the legal estate of the mortgagor into an equitable interest: s. 95 (4), *inf.* "Possession" is not used in the sense of physical possession, but as opposed to an interest in remainder.

Fee simple liable to be divested.

A fee simple liable to be divested by the Lands Clauses Acts, School Sites Acts or any similar statute, remains a "legal estate": s. 7 (1), *inf.*

Corporation's fee simple.

A fee simple vested in a corporation, liable to be terminated by the dissolution of the corporation, also remains a "legal estate": s. 7 (2), *inf.* On the

dissolution of the corporation the court has power to make a vesting order: s. 181, *inf.*

Simplification by reduction of legal estates; abolition of legal life estates.

Tenures having been reduced to two, freehold, and leasehold for years by the L. P. A., 1922, *sup.*; this s. carries the process of simplification further by reducing "legal estates" to two. The object is to prevent them, from the point of view of time, being split up, vertically, into legal life estates, remainders and executory interests. As to the quantum of estates, see ss. 34—38 and 1st Sch., Pts. IV. to VII., which prohibit, horizontally, the subsistence of undivided shares.

Crown.

As to how far the Crown is bound, see s. 208, *inf.*

Position of tenants for life.

Though life interests cannot subsist as legal estates, still each tenant for life, including a limited owner, will have the legal estate in the settled land vested in him: 1st Sch., Pt. II., para. 5; S. L. A., 1925, ss. 6—10, 2nd Sch.; and purchasers (including mortgagees) of the beneficial life interest will (without prejudice to the statutory powers) have the same rights and remedies as if the interest had been legal: S. L. A., 1925, s. 111.

Leases for lives.

Leases for lives at a rent or in consideration of a fine are by s. 149 (6), *inf.*, converted into terms of ninety years terminable by notice and thus become "legal estates." They would otherwise have become equitable interests: see sub-s. (3), *inf.* See also L. P. A., 1922, s. 133.

Terms created by settlements.

But a term created by a settlement which is terminable with life is converted into an equitable interest: 1st Sch., Pt. I., *inf.*; and ordinary portions terms, unless previously conveyed for raising money, become equitable interests when the vesting instrument is executed: S. L. A., 1925, 2nd Sch., para. 1 (6).

(2) The only interests or charges in or over land which are capable of subsisting or of being conveyed or created at law are—

(a) An easement, right, or privilege in or over land for an interest equivalent to an estate in fee simple absolute in possession or a term of years absolute;

(b) A rentcharge in possession issuing out of or charged on land being either perpetual or for a term of years absolute;

(c) A charge by way of legal mortgage;

(d) Land tax, tithe rentcharge, and any other similar charge on land which is not created by an instrument;

(e) Rights of entry exercisable over or in respect of a legal term of years absolute, or annexed, for any purpose, to a legal rentcharge.

Legal interests and charges.

The interests and charges described in this sub-s. are on the same footing as legal estates. A charge by way of legal mortgage (see s. 87, *inf.*) does not create any estate, but the legal chargee is in the same position as if he had a mortgage term.

An "instrument" does not include a statute: s. 205 (1) (viii). Thus an annuity charge for redeeming tithe rentcharge is a "similar charge" within para. (d).

For rights of entry "annexed" to a rentcharge, see s. 121, *inf.*

(3) All other estates, interests, and charges in or over land take effect as equitable interests.

For definition of "equitable interests," see s. 205 (1) (x); these include interests in the proceeds of sale of land held on trust for sale: *ib.*

Conversion of certain legal estates into equitable interests.

Under the 1st Sch., Pt. I., all interests in land which cannot take effect as "legal estates," including fees determinable (but subject to s. 7), are converted into equitable interests and do not fail or lose their priority.

Rights of pre-emption and options to purchase.

Rights of pre-emption and options to purchase take effect as equitable interests: s. 186, *inf.*, but subject as between lessor and lessee to s. 6 (1), *inf.*

(4) The estates, interests, and charges which under this section are authorised to subsist or to be conveyed or created at law are (when subsisting or conveyed or created at law) in this Act referred to as "legal estates," and have the same incidents as legal estates subsisting at the commencement of this Act; and the owner of a legal estate is referred to as "an estate owner" and his legal estate is referred to as his estate.

"Legal estates."

"Estate owner."

For definition of "legal estates," see s. 205 (1) (x).

For "estate owner": *ib.* (v).

"Have the same incidents": for instance, a purchaser of a legal estate without notice of an equitable interest will take free therefrom. See also s. 2 (5), *inf.*

(5) A legal estate may subsist concurrently with or subject to any other legal estate in the same land in like manner as it could have done before the commencement of this Act.

Concurrent legal estates.

Thus A. may have the fee simple in possession, B. an easement for a legal estate, D. the tithe rentcharge, E. a lease for ninety-nine years, F. a lease for twenty-one years, G. a weekly tenancy, H. a perpetual rentcharge and a legal right of entry if the rentcharge is not paid, I. a mortgage either by demise or charge by way of legal mortgage, all in the same land subsisting concurrently.

No limit to number of legal mortgages.

"Puisne mortgages."

Indeed, there may be any number of mortgages all of which can be legal, in this respect increasing the number of possible legal estates; but a mortgage not protected by a deposit of deeds (s. 13) and not registered in a local deeds registry must be registered as a land charge: s. 97; 1st Sch., Pt. VII., para. 6; Pt. VIII., para. 5; L. C. A., 1925, s. 10, Class C. (i); *ib.*, sub-s. (7).

(6) A legal estate is not capable of subsisting or of being created in an undivided share in land or of being held by an infant.

Undivided shares.

As to undivided shares, see ss. 34 to 38, *inf.*

Land held before 1926 in undivided shares is made subject to a trust for sale, see 1st Sch., Pt. IV. As to the application of these provisions to settled land, see S. L. A., 1925, s. 36. A legal easement may be held by a number of persons in common: s. 187, *inf.*

Infant cannot take or hold a legal estate.

As to infants, see ss. 19 and 20. Where a legal estate is vested in one or more infants before 1926, see 1st Sch., Pt. III. As to settled land, see S. L. A.,

1925, ss. 19 (3), 26 and 27; also 2nd Sch., s. 3. As to administration during minority of executor, see Ad. of E. A., 1925, s. 20; Jud. A., 1925, s. 165. As to power to appoint trustees of infant's property, *ib.*, s. 42. A legal estate vested in an infant on 1st January, 1926, is by 1st Sch., Pt. II., *inf.*, vested in the person of full age who becomes entitled thereto.

(7) Every power of appointment over, or power to convey or charge land or any interest therein, whether created by a statute or other instrument or implied by law, and whether created before or after the commencement of this Act (not being a power vested in a legal mortgagee or an estate owner in right of his estate and exercisable by him or by another person in his name and on his behalf), operates only in equity.

Springing and shifting uses and powers of appointment void at law.

This sub-s. supplements the repeal of the Statute of Uses (as amended); for the repeals effected by the L. P. A., 1922, see L. P. (Amend.) A., 1924, 1st Sch. These repeals are repeated in the Consolidating Acts to which they relate.

Thus legal powers of appointment, powers to convey, shifting and springing uses and executory limitations will only be capable of passing equitable interests, to which effect can be given under s. 3, *inf.*, and S. L. A., 1925, s. 16. But as to legal rights of entry, whether or not originally created by way of use: sub-s. (2) (e), *sup.*, and s. 4 (3), *inf.*

As regards wills, the legal estate must in all cases pass to the personal representatives: Ad. of E. A., 1925, ss. 1, 22 and 23, who can only pass the legal estate by an assent in writing: *ib.*, s. 36, or by a conveyance. A bequest of leaseholds to a person for life can no longer pass a legal estate; dispositions by will can only operate in equity: L. P. (Amend.) A., 1924, 9th Sch., para. 3.

"Convey."

For the meaning of "convey" or "conveyance," see s. 205 (1) (ii); it includes every form of assurance by an "instrument" (*ib.* viii) other than a will. The object of this reform is to prevent the automatic shifting of a legal estate from one person to another without the aid of an instrument to evidence the transfer.

Savings.

For the power of a "legal mortgagee" (s. 205 (1) (xvi)) to convey a legal estate which is not vested in him, see ss. 88, 89 and 101, *inf.* For examples of statutory powers of attorney, see ss. 7 (3) (4), 8, 88 (1) and 89 (1), *inf.* As to savings of other powers, see ss. 7 (3) and 8. And for the power to make vesting orders, &c., see s. 9.

General rule.

The general rule is that a legal estate can only be conveyed by the estate owner, thus making legal estates the basis of conveyancing.

(8) Estates, interests, and charges in or over land which are not legal estates are in this Act referred to as "equitable interests," and powers which by this Act are to operate in equity only are in this Act referred to as "equitable powers."

"Equitable interests" and "equitable powers."

See definitions s. 205 (1) (x) (xi). This sub-s. explains the definitions.

(9) The provisions in any statute or other instrument requiring land to be conveyed to uses shall take effect as directions that the land shall (subject to creating or reserving thereout any legal estate authorised by this

Act which may be required) be conveyed to a person of full age upon the requisite trusts.

Directions to convey to uses.

In place of the directions to convey to uses, see as to settled land, S. L. A., 1925, s. 10.

Substitution of "trusts" for "uses."

"Trusts" will, after 1925, be substituted for "uses," but there can be no objection to using the expression "use," for it will have the same meaning as "trust," save that it may be confusing.

For the effect of an attempted conveyance of a legal estate to an infant, see s. 19, *inf.*, and S. L. A., 1925, s. 27.

"Legal estate authorised by this Act": *i.e.*, the estates and interests which under sub-ss. (1) and (2), *sup.*, can subsist at law; and see notes to those sub-ss.

Creation or reservation of legal estates.

As to creating or reserving legal estates, see s. 3 (1) (b) (ii) (2)—(5); S. L. A., 1925, s. 16 (1) (ii) (iii) (2)—(7); as to the form of reservations of legal estates, see s. 65, *inf.*; and as to legally confirming past transactions, see s. 66, *inf.*

(10) The repeal of the Statute of Uses (as amended) does not affect the operation thereof in regard to dealings taking effect before the commencement of this Act.

Amendments of the Statute of Uses.

The statute was amended by the L. P. (Amend.) A., 1860, s. 7, abolishing the doctrine of *scintilla juris* (repealed, 7th Sch., *inf.*), and by C. A., 1881, s. 62, enabling legal easements to be created by way of use, also repealed: 7th Sch., *inf.*

Vesting of legal estates on 1st January, 1926.

This sub-s. confirms the interpretation which would have been applied under Interp. A., 1889, s. 38 (2) (b); but under the 1st Sch., Pt. II., *inf.*, legal estates, in whomsoever vested on 31st December, 1925, will be vested in the persons who, under the new practice, are entitled to them.

Repeal of a statute does not revive an enactment thereby repealed

The Statute of Uses was repealed by the L. P. A., 1922, though the part of that Act containing the repeal was repealed by this Act (see 7th Sch.) before the L. P. A., 1922, came into force; that does not revive the Statute of Uses: Interp. A., 1889, s. 11. It is clear that there was no intention to revive the enactments in the 1st Sch. to the L. P. (Amend.) A., 1924; moreover, the L. P. A., 1922, has a momentary operation, for it comes into force on 1st January, 1926, and, as respects the parts repealed, is repealed on the same date; but to prevent any doubt arising the statute is again repealed by this Act.

New modes of assurance rendered necessary.

For new modes of assurance rendered necessary by reason of the repeal of the Statute of Uses, see ss. 51 and 149 (conveyances operating to pass the "possession"); s. 65 (reservation of legal estates); s. 66 (legal confirmation of past transactions); s. 72 (conveyance to self).

Conveyances overreaching certain equitable interests and powers.

2.—(1) A conveyance to a purchaser of a legal estate in land shall overreach any equitable interest or power affecting that estate, whether or not he has notice thereof, if—

15 Geo. 5, c. 18.

(i) the conveyance is made under the powers conferred by the Settled Land Act, 1925, or any additional powers conferred by a settlement, and the equitable interest or power is capable of being overreached thereby, and the statutory requirements respecting the payment of capital

money arising under the settlement are complied with;

"Purchaser" in this s. means a purchaser for money's worth: s. 205 (1) (xxi). Notice is not material when an interest can be overreached. Notice.

For the overreaching powers, see S. L. A., 1925, s. 72; for meaning of "settlement": *ib.*, s. 1; if there is a compound settlement it means that settlement: *ib.*, sub-s. (1). As to additional powers: s. 109. Capital money must be paid to not less than two individuals or a trust corporation: *ib.*, s. 94. S.L.A., overreaching powers.

(ii) the conveyance is made by trustees for sale and the equitable interest or power is at the date of the conveyance capable of being overreached by such trustees under the provisions of subsection (2) of this section or independently of that subsection, and the statutory requirements respecting the payment of capital money arising under a disposition upon trust for sale are complied with;

"Trustees for sale" (s. 205 (1) (xxix)) have the same overreaching powers as a tenant for life: s. 28, *inf.* Purchasers are not concerned with the trusts of proceeds of sale if paid to two individuals or a trust corporation: s. 27. See also T. A., 1925, ss. 12 to 14, 16 and 17. As to trust for sale on intestacy, see Ad. of E. A., 1925, s. 33. Overreaching powers of trustees for sale.

(iii) the conveyance is made by a mortgagee or personal representative in the exercise of his paramount powers, and the equitable interest or power is capable of being overreached by such conveyance, and any capital money arising from the transaction is paid to the mortgagee or personal representative;

A conveyance on sale by a legal mortgagee overreaches legal mortgages subsequent to the mortgage in right of which the sale is made: ss. 88 (1) (a), 89 (1) (a). Mortgagees overreaching powers.

Whether it will overreach a prior equitable charge (see s. 88 (6)) will depend, if the charge was created before 1926, on whether the purchaser has notice thereof; if it is created or dealt with after 1925, then, unless it is protected by a deposit of documents, he will take free therefrom unless it is registered as a land charge under L. C. A., 1925, s. 10, Class C.; registration as a land charge is actual notice: s. 198 (1), *inf.* See also as to the operation of a mortgagee's power of sale: s. 101, *inf.*

Leases granted by a mortgagee in possession under s. 99, *inf.*, bind all prior incumbrancers and the mortgagor; also where a receiver has been appointed: s. 99 (19). Leases.

Where personal representatives hold on trust for sale, then ss. 23—32 (relating to trusts for sale) apply: s. 33, but without prejudice to their administration powers. Overreaching powers of personal representatives.

They have the same overreaching powers, whether or not there is a trust for sale, as if they were trustees for sale: Ad. of E. A., 1925, s. 39, hence as s. 28, *inf.*, gives the powers of a tenant for life to trustees for sale, S. L. A., 1925, s. 72 (the overreaching s.) also applies to personal representatives.

Under s. 27 (2), *inf.*, the right of a sole personal representative to give a valid receipt for capital is preserved.

But where there is a minority or a life interest, then representation will not be granted to less than two individuals, though it may be granted solely to a trust corporation: Jud. A., 1925, s. 160. Under that s., if the representation is held by one person, an additional personal representative may be appointed during a minority or the subsistence of a life interest.

Payment "to" or by the direction of a person.

Payment "to" a mortgagee or personal representative includes a payment made by his direction.

(iv) the conveyance is made under an order of the court and the equitable interest or power is bound by such order, and any capital money arising from the transaction is paid into, or in accordance with the order of, the court.

Conveyances by order of court.

Conveyances under an order of the court are conclusive in favour of a purchaser: s. 204. Payment into or by the direction of the court gives a valid discharge: s. 203 (1).

As to vesting orders, &c., see s. 9, *inf.* As to orders for sale of mortgaged property or property subject to equitable charges, see ss. 90 and 91. The court may convert the equitable charge into a legal mortgage to enable the chargee to sell out of court, but without prejudice to a prior incumbrancer: ss. 90 (1), 91 (7).

(2) Where the legal estate affected is not, when the equitable interest or power is created, subject to a trust for sale or a settlement, then, if the estate owner, whether before or after the commencement of this Act, disposes of his estate to trustees upon trust for sale, and at the date of a conveyance made, after such commencement, under the disposition upon trust for sale the trustees (whether original or substituted) are either—

(a) two or more individuals approved or appointed by the court or the successors in office of the individuals so approved or appointed; or

(b) a trust corporation,

such equitable interest or power shall, notwithstanding any stipulation to the contrary, be overreached by the conveyance, and shall, according to its priority, take effect as if created or arising by means of a primary trust affecting the proceeds of sale and the income of the land until sale.

"Disposition" means a "will" as well as a "conveyance": s. 205 (1) (ii) (xxxi).

New method of making title by means of a trust for sale.

Thus although the equitable interest affected the legal estate before the trust for sale was created, it will take effect as if it had been declared by a trust of the proceeds of sale; a purchaser is not concerned with the trusts affecting the proceeds, but the capital, if any, must be paid to a trust corporation, or to not less than two individuals: s. 27, *inf.* The next sub-s. provides for the

cases where the equitable interest cannot properly be shifted to the proceeds of sale.

An alternative method of overreaching equitable interests is provided by S. L. A., 1925, s. 21, by means of a settlement. Alternative method.

If an equitable interest is created after the trust for sale or settlement, then nothing could make it paramount thereto, except an Act of Parliament.

In the case of a trust for sale or a settlement of land there cannot be more than four persons to act as trustees: T. A., 1925, s. 34; this does not apply to charitable trusts. Limit of number of trustees.

For meaning of "trust corporation," see s. 205 (1) (xxviii); it includes, for instance, the Public Trustee and banks, &c. who have taken power to act as custodian trustees. "Trust corporation."

Interests or powers arising by statute or operation of law are treated as "created": s. 205 (2), *inf.* Arising by statute or operation of law.

(3) The following equitable interests and powers are excepted from the operation of subsection (2) of this section, namely—

(i) Any equitable interest protected by a deposit of documents relating to the legal estate affected;

(ii) The benefit of any covenant or agreement restrictive of the user of land;

(iii) Any easement, liberty, or privilege over or affecting land and being merely an equitable interest (in this Act referred to as an "equitable easement");

(iv) The benefit of any contract (in this Act referred to as an "estate contract") to convey or create a legal estate, including a contract conferring either expressly or by statutory implication a valid option to purchase, a right of pre-emption, or any other like right;

(v) Any equitable interest protected by registration under the Land Charges Act, 1925, other than—

(a) an annuity within the meaning of Part II. of that Act;

(b) a limited owner's charge or a general equitable charge within the meaning of that Act.

A deposit of documents (s. 13) must be allowed to create a paramount interest, otherwise advances on the security of such deposits would become unsafe. In the case of unregistered land the purchaser must obtain the legal estate (s. 42) and ascertain that the deeds are in the proper custody. Equitable interests which cannot be overreached.

None of the other exceptions could be properly represented in terms of money. Restrictive covenants, "equitable easements" and "estate contracts."

Restrictive covenants, "equitable easements" (*e.g.*, an easement for a less interest than a fee simple or term of years absolute, such as a personal licence) and "estate contracts," if entered into or created before 1926, will not affect a purchaser if he is not affected with notice: sub-s. (5), *inf.*

If they are entered into or created after 1925 and are not registered as land charges, then, again, he will take free from them, whether or not he has notice: L. C. A., 1925, s. 13 (2). A "restrictive covenant" does not, for the purpose of the overreaching provisions, include a restrictive covenant entered into between a lessor and lessee: s. 6, *inf.*; L. C. A., 1925, s. 10, Class D.; it cannot be defeated thereby.

Also if an "estate contract" is assigned after 1925, though created before 1926, a purchaser will take free therefrom unless a land charge is registered within a year from the assignment: *ib.*, s. 14 (2).

Annuities for life or for years terminable with life.

An annuity within L. C. A., 1925, Pt. II. (see s. 4 (5) for the definition), is allowed to be overreached because this can properly be transferred to the proceeds of sale or the income thereof.

Similarly a "limited owner's charge" (see L. C. A., 1925, Class C. (ii)) and a "general equitable charge" (Class C. (iii)) can be properly discharged out of the proceeds of sale.

Registered land.

In the case of registered land the appropriate entries must be made in the register to protect equitable interests in place of registering a land charge: L. C. A., 1925, s. 23; L. R. A., 1925, s. 59 (2) (7).

(4) Subject to the protection afforded by this section to the purchaser of a legal estate, nothing contained in this section shall deprive a person entitled to an equitable charge of any of his rights or remedies for enforcing the same.

Rights and remedies of equitable chargees.

For these remedies, see s. 90. If the court vests a mortgage term in the chargee, then the mortgage becomes a legal mortgage; but if it becomes a "puisne mortgage" within L. C. A., 1925, s. 10, Class C. (i), then a land charge should be registered to protect it, unless a land charge was registered while it was a "general equitable charge."

(5) So far as regards the following interests, created before the commencement of this Act (which accordingly are not within the provisions of the Land Charges Act, 1925), namely—

15 Geo. 5, c. 22.

(a) the benefit of any covenant or agreement restrictive of the user of the land;

(b) any equitable easement;

(c) the interest under a puisne mortgage within the meaning of the Land Charges Act, 1925, unless and until acquired under a transfer made after the commencement of this Act;

(d) the benefit of an estate contract, unless and until the same is acquired under a conveyance made after the commencement of this Act;

a purchaser of a legal estate shall only take subject thereto if he has notice thereof, and the same are not overreached under the provisions contained or in the manner referred to in this section.

Equitable interests overreached if purchaser does not have notice.

"Restrictive covenants" do not include covenants between a lessor and lessee: s. 6, *inf.*; also L. C. A., 1925, s. 10, Class D. (ii).

All the interests referred to in this sub-s., if created after 1925, must be registered as land charges; those in (c) and (d) must also be registered if a

dealing therewith takes place after 1925: L. C. A., 1925, s. 10, Class C. (i) and (iv), s. 14 (2).

"If he has notice thereof," see s. 1 (4), *sup.*, legal estates "have the same incidents, &c."

"Under the provisions contained," &c., for the overreaching powers conferred by sub-ss. (1) and (2) take effect whether or not the purchaser has notice; thus sub-s. (5) restores the old law in regard to the matters within it, and prevents sub-s. (3) having too wide an operation. It is not quite correct to say that the old law is restored as respects an "equitable easement," for before 1926 the easement might have been legal and have been converted into an equitable interest by 1st Sch., Pt. I., which only preserves its priority, but does not prevent it being overreached as an equitable interest. The number of equitable easements has been extended.

When notice is material.

As to what is or is not notice, see ss. 197—199, *inf.*

As to notice.

3.—(1) All equitable interests and powers in or over land shall be enforceable against the estate owner of the legal estate affected in manner following (that is to say):—

Manner of giving effect to equitable interests and powers.

(a) Where the legal estate affected is settled land, the tenant for life or statutory owner shall be bound to give effect to the equitable interests and powers in manner provided by the Settled Land Act, 1925;

This para. refers to S. L. A., 1925, s. 16. For the meaning of "tenant for life," see *ib.*, ss. 19—21, 117 (1) (xxviii); it does not include an infant, but does include persons who have the powers of a tenant for life otherwise than under s. 23.

Enforcement of equitable interests affecting settled land.

For "statutory owner," see *ib.*, ss. 23, 26, and 117 (1) (xxvi); it means the trustees of the settlement or other persons who, when there is no tenant for life (*e.g.*, during a minority or during the subsistence of a discretionary trust), have the powers of a tenant for life under ss. 23 or 26.

(b) Where the legal estate affected is vested in trustees for sale—

(i) The trustees shall stand possessed of the net proceeds of sale after payment of costs and of the net rents and profits of the land until sale after payment of rates, taxes, costs of insurance, repairs, and other outgoings, upon such trusts and subject to such powers and provisions as may be requisite for giving effect to the equitable interests and powers affecting the same respectively, of which they have notice, and whether created before or after the disposition upon trust for sale, according to their respective priorities:

Trusts of proceeds of sale and rents till sale.

Thus the equitable interest is shifted to the proceeds and rents till sale, according to its priority, whether it was created before or after the "disposition"

on trust for sale. When created "before" the disposition it can be brought under it: s. 2 (2), *sup.*

"Disposition" includes a "will" as well as a "conveyance": s. 205 (1) (ii) (xxxi).

(ii) Where, by reason of the exercise of any equitable power or under any trust affecting the proceeds of sale, any principal sum is required to be raised, or any person of full age becomes entitled to require a legal estate in the land to be vested in him in priority to the trust for sale, then, unless the claim is satisfied out of the net proceeds of sale, the trustees for sale shall (if so requested in writing) be bound to transfer or create such legal estates, to take effect in priority to the trust for sale, as may be required for raising the money by way of legal mortgage or for giving legal effect to the rights of the person so entitled:

Provided that, if the proceeds of sale are held in trust for persons of full age in undivided shares absolutely free from incumbrances affecting undivided shares, those persons cannot require the land to be conveyed to them in undivided shares, but may (subject to effect being given by way of legal mortgage to incumbrances affecting the entirety) require the same to be vested in any of them (not exceeding four) as joint tenants on trust for sale; and if the conveyance purports to transfer the land to any of them in undivided shares or to more than four such persons, it shall operate only as a transfer to them or (if more than four) to the four first named therein as joint tenants on trust for sale:

For "equitable power," see ss. 1 (8), 205 (1) (xii). For "legal mortgage," see s. 205 (1) (xvi). As to mortgages of undivided shares: s. 102. When partnership land is vested in not more than four of the partners on trust for sale, they must raise money in accordance with the directions of the partners; and see T. A., 1925, ss. 16 and 17; also S. L. A., 1925, s. 16 (2), as to the protection of the mortgagee.

As to duration of a trust for sale, see s. 23, *inf.*

No conveyance in undivided shares.

A legal estate having priority to the trust for sale cannot be overreached unless it comes within S. L. A., 1925, s. 72, or being a "puisne mortgage" is not registered under L. C. A., 1925, s. 10, Class C. (i); for a mortgage by demise can be effected (*e.g.*, to secure debentures) by means of a trust for sale: *cf.* ss. 85 (3) and 86 (3).

Effect of conveyances to more than four persons.

The proviso gives effect to the principle laid down in ss. 34—38; for the power to partition among persons interested in the proceeds, see s. 28 (3). Not more than four trustees are allowed: T. A., 1925, s. 34; hence the proviso defines how a conveyance which infringes this rule is to operate.

(c) Where the legal estate affected is neither settled land nor vested in trustees for sale, the estate owner shall be bound to give effect to the equitable interests and powers affecting his estate of which he has notice according to their respective priorities. This provision does not affect the priority or powers of a legal mortgagee, or the powers of personal representatives for purposes of administration.

Para. (a) deals with settled land; para. (b) with land held on "trust for sale" (s. 205 (1) (xxix), *i.e.*, subject to an immediate binding trust for sale, as opposed to a future trust for sale which brings the land within S. L. A., 1925, s. 30 (1) (iv), so as to become settled land).

Absolute owners, legal mortgagees and personal representatives.

This para. deals with the remaining three cases, namely, a legal estate vested in an absolute owner subject only to an equitable interest, which under s. 2 (2), *sup.*, he could arrange to overreach; see also s. 42, *inf.* Secondly, a legal mortgagee, who, however, would only be bound by the equities which had priority over his mortgage. And, thirdly, a "personal representative" (s. 205 (1) (xviii)) to whom overreaching powers of disposition are given by Ad. of E. A., 1925, ss. 36 and 39, whether or not he holds on trust for sale (*e.g.*, under s. 33 of that Act on an intestacy). A distinction must be drawn between an equitable interest in the nature of a family charge (S. L. A., 1925, s. 1 (1) (v)), which creates a "settlement" and can be overreached by an absolute owner when S. L. A. trustees are appointed, and an equitable interest created for money's worth, which can only be overreached under s. 2, *sup.*, or S. L. A., 1925, s. 21.

Powers of mortgagees and personal representatives.

For the powers of a "legal mortgagee" (s. 205 (1) (xvi)), see ss. 88, 89, 95, 99—109; and for those of a personal representative, see Ad. of E. A., 1925, ss. 39, 40; T. A., 1925, ss. 15, 26, 27, 68 (17).

(2) Effect may be given by means of a legal mortgage to an agreement for a mortgage, charge or lien (whether or not arising by operation of law) if the agreement, charge or lien ought to have priority over the trust for sale.

Agreement for a mortgage.

For "legal mortgage," see s. 205 (1) (xvi); as to the powers of the court, see ss. 90 and 91.

(3) Where, by reason of a statutory or other right of reverter, or of an equitable right of entry taking effect, or for any other reason, a person becomes entitled to require a legal estate to be vested in him, then and in any such case the estate owner whose estate is affected shall be bound to convey or create such legal estate as the case may require.

Paramount titles.

This sub-s. secures that paramount titles shall, where the paramount interest is capable of subsisting as a legal estate, be converted into legal titles.

(4) If any question arises whether any and what legal estate ought to be transferred or created as aforesaid, any person interested may apply to the court for directions in the manner provided by this Act.

Applications to the court.

As to vesting orders or orders appointing a person to convey a legal estate,

see s. 9; as to jurisdiction and procedure, see s. 203; as to orders being conclusive in favour of a purchaser, see s. 204.

(5) If the trustees for sale or other estate owners refuse or neglect for one month after demand to transfer or create any such legal estate, or if by reason of their being out of the United Kingdom or being unable to be found, or by reason of the dissolution of a corporation, or for any other reason, the court is satisfied that the transaction cannot otherwise be effected, or cannot be effected without undue delay or expense, the court may, on the application of any person interested, make a vesting order transferring or creating a legal estate in the manner provided by this Act.

The "United Kingdom" means Great Britain and Northern Ireland: s. 205 (1) (xxx).

"In the manner provided by this Act": see s. 9.

Vesting orders on refusal to convey, &c.

(6) This section does not affect a purchaser of a legal estate taking free from an equitable interest or power.

Overreaching powers in favour of a purchaser.

A "purchaser" in Part I. means a purchaser for money's worth: s. 205 (1) (xxi).

For the overreaching provisions, see s. 2, *sup.*, and notes thereto (equitable interests); s. 9 (overreaching effect of a vesting order); s. 17 (charge for death duties); ss. 27 and 28 (by trustees for sale); 1st Sch., Pt. IV. (equitable interests affecting undivided shares); ss. 88, 89, 101 (by legal mortgagees); s. 90 (by equitable chargees under a vesting order); s. 97 (3), 1st Sch., Pt. VII., para. 6, Pt. VIII., para. 5 (unprotected puisne mortgages); s. 99 (leases of mortgaged land); ss. 111—113 (trusts affecting mortgage debts); s. 195 (3) and (4) (judgment debts and recognisances unless registered); s. 200, and L. C. A., 1925 (as respects restrictive covenants and other matters required to be registered); S. L. A., 1925, s. 72 (overreaching powers as respects settled land), extended to land held on trust for sale by s. 28, *inf.*, and to land vested in personal representatives by Ad. of E. A., 1925, s. 39; L. C. A., 1925, ss. 2, 3, 6 and 7 (claims of trustee in bankruptcy); *ib.*, ss. 8 and 9 (deeds of arrangement); *ib.*, Pts. V. and VI. (land charges and local land charges); Ad. of E. A., 1925, s. 36 (effect of conveyance or assent by a personal representative as respects a purchaser).

Creation and disposition of equitable interests.

4.—(1) Interests in land validly created or arising after the commencement of this Act, which are not capable of subsisting as legal estates, shall take effect as equitable interests, and, save as otherwise expressly provided by statute, interests in land which under the Statute of Uses or otherwise could before the commencement of this Act have been created as legal interests, shall be capable of being created as equitable interests:

Provided that, after the commencement of this Act (and save as hereinafter expressly enacted), an equitable interest in land shall only be capable of being validly

created in any case in which an equivalent equitable interest in property real or personal could have been validly created before such commencement.

Equitable freehold estates *in futuro*.

As freehold estates could under the Statute of Uses have been created *in futuro* (Goodeve, R. P., 5th ed., 210; *Savill* v. *Bethell*, 1902, 2 Ch. 523), it follows that similar equitable interests can be created.

As respects interests subsisting before 1926 which are not "capable of subsisting as legal estates" (s. 205 (1) (x)), see 1st Sch., Pt. I.

Arising by statute or operation of law.

Interests and powers arising by statute or operation of law are treated as "created": s. 205 (2).

Maintenance in equity of interests known to the law subject to restrictions.

Under this sub-s. a limitation which would have taken effect as a shifting and springing use will take effect as a shifting or springing trust; but special restrictions are imposed in regard to executory limitations affecting real and personal property by s. 134, *inf.* Further, restrictions are imposed on the creation of entailed interests in s. 130 (2) and (6), and by the abolition of the rule in *Shelley's Case:* s. 131; at the same time an "heir" can take, as a purchaser, personal property in the same way as he would have taken real property: s. 132. Undivided shares in land can only be created in equity so as to take effect behind a trust for sale: ss. 34—38, *inf.*; S. L. A., 1925, s. 36.

Assimilation.

The general principle underlying all these enactments is the assimilation of the rules relating to real and personal property respectively, the best features being adopted from either class of property and made to apply to property generally.

"Writing" when required.

"Validly created": as to what interests must be created or disposed of "by writing," see ss. 53—55, *inf.*; and as to contracts, s. 40. This sub-s. does not affect the perpetuity rule.

Interests created by analogy to the Statute of Uses.

The Statute of Uses never applied to wills; no grantee to uses was required; it was sufficient (subject, after 1897, to any requisite assent by the executors) to devise freeholds direct to the uses required; such devises passed the legal estate of the testator. After 1925 they will only pass equitable interests, which in proper cases will, by means of a vesting or other assent in writing, be clothed with a legal estate, hence the words "or otherwise."

(2) All rights and interests in land may be disposed of, including—

(a) a contingent, executory or future equitable interest in any land, or a possibility coupled with an interest in any land, whether or not the object of the gift or limitation of such interest or possibility be ascertained;

(b) a right of entry, into or upon land whether immediate or future, and whether vested or contingent.

"Disposed of."

"Disposition" includes a disposition by will as well as every form of conveyance by an "instrument": s. 205 (1) (ii) (viii).

On the death of an intestate rights of entry and reverter pass as beneficial interests to the personal representatives: Ad. of E. A., 1925, s. 52.

Assignments of rights of entry.

This sub-s., which reproduces R. P. A., 1845, s. 6, must be read with s. 142 (3). Care must be taken not to confirm a voidable lease, otherwise the purchaser will not be able to exercise the power of re-entry, which would then be treated as waived: *Davenport* v. *Smith*, 1921, 2 Ch. 270; but there can be no waiver without notice of the breach: *Atkin* v. *Rose*, 1923, 1 Ch. 522, unless the lease is confirmed by an implied legal reservation: s. 65 (2), *inf.*

Hunt v. Bishop, 1853, 8 Ex. 675, and *Hunt* v. *Remnant*, 1854. 9 Ex. 635, 640,

as explained in *Jenkins* v. *Jones*, 1882, 9 Q. B. D. at p. 131, which have been overruled by s. 142 (3), *inf.* (replacing C. A., 1911, s. 2), merely showed that an all estate clause (s. 63, *inf.*) was not a sufficient indication of an intention to pass a right of entry which had previously become exercisable. The dictum in *Hunt* v. *Bishop*, at p. 680, that s. 6 of R. P. A., 1845, did not apply to a right to enter for a condition already broken, has never been accepted and does not apply to this sub-s.; see also the next sub-s.

No one would suggest that a conveyance of a rentcharge would not pass all the remedies annexed thereto (s. 1 (2) (e), *sup.*), whether conferred expressly or by statute, or implied by law.

(3) All rights of entry affecting a legal estate which are exercisable on condition broken or for any other reason may after the commencement of this Act, be made exercisable by any person and the persons deriving title under him, but, in regard to an estate in fee simple (not being a rentcharge held for a legal estate) only within the period authorised by the rule relating to perpetuities.

Rights of entry affecting a legal estate.

The only legal rights of entry are those exercisable for determining, &c. a legal term of years absolute, or which are annexed to a legal rentcharge: s. 1 (2) (e), *sup.*

Formerly rights of entry over a fee simple for condition broken could be given to a person "and his heirs," and when so given were generally considered as not being affected by the perpetuity rule. After 1925, with an insignificant exception in Ad. of E. A., 1925, s. 51 (2), "heirs" will be incapable of taking under an intestacy.

What rights of entry can be conferred.

This sub-s. enables rights of entry to be conferred, after 1925, on the grantee, his personal representatives and assigns, provided that, when operating to defeat a fee simple, they must (save as mentioned below) be limited so as not to infringe the perpetuity rule.

Perpetuities.

The sub-s. removes the doubt whether the owner of a legal rentcharge can have not merely the limited powers conferred by s. 121, *inf.*, but an absolute power to take possession of the land out of which the rent issues on non-payment of the rent or on breach of covenant, without regard to the perpetuity rule.

Enforcement of equitable rights.

As to the enforcement of equitable rights of entry, see s. 3 (3), *sup.*; also S. L. A., 1925, s. 16 (1) (ii).

Satisfied terms, whether created out of freehold or leasehold land to cease.

5.—(1) Where the purposes of a term of years created or limited at any time out of freehold land, become satisfied either before or after the commencement of this Act (whether or not that term either by express declaration or by construction of law becomes attendant upon the freehold reversion) it shall merge in the reversion expectant thereon and shall cease accordingly.

Cesser of satisfied terms created out of freeholds.

This sub-s. replaces the S. T. A., 1845, with the amendment within brackets, which removes any question whether the term does or does not become attendant on the reversion.

See also sub-s. (3), *inf.*, where the purposes are satisfied as respects part of the land.

Outstanding costs.

Whether the term is or is not satisfied depends on the circumstances of each case; a claim for unpaid costs by the trustees of the term may keep it alive.

As to the conditions to be complied with before a term becomes satisfied, see *Anderson* v. *Pignet*, 1872, 8 Ch. App. 180. When terms are satisfied.

(2) Where the purposes of a term of years created or limited, at any time, out of leasehold land, become satisfied after the commencement of this Act, that term shall merge in the reversion expectant thereon and shall cease accordingly.

The S. T. A., 1845, did not apply to terms created out of leaseholds: S. T. A., 1845, s. 3; *Re Moore and Hulm*, 1912, 2 Ch. 105. Cesser of satisfied terms created out of leaseholds.

This sub-s. only applies to terms satisfied after 1925; see also as to mortgage terms, s. 116, *inf.*

This sub-s. is supplemented, as respects terms subsisting before 1926, by 1st Sch., Pt. II., para. 1; in this case, without prejudice to any protection which might have been afforded to the reversioner had the term remained on foot, on the principle that existing beneficial rights should not be interfered with.

(3) Where the purposes are satisfied only as respects part of the land comprised in a term, this section shall have effect as if a separate term had been created in regard to that part of the land.

For instance, if the charge remains subsisting in respect of part of the land, the other part having been released therefrom. Partial satisfaction.

6.—(1) Nothing in this Part of this Act affects prejudicially the right to enforce any lessor's or lessee's covenants, agreements or conditions (including a valid option to purchase or right of pre-emption over the reversion), contained in any such instrument as is in this section mentioned, the benefit or burden of which runs with the reversion or the term. Saving of lessors' and lessees' covenants.

Thus no land charge has to be registered to protect lessor's or lessee's covenants, for the lease is the charter of the title: L. C. A., 1925, s. 10, Class D. (ii). But if the lease is determined otherwise than by effluxion of time, then there may be a restrictive covenant, enforceable during the original term, as part of a building scheme, by the adjoining lessees; in such cases it might be expedient to register a land charge. Restrictive covenants.

Rights of pre-emption and options to purchase are equitable interests: see s. 186, *inf.*; such options and rights should be protected as "estate contracts" (L. C. A., 1925, s. 10, Class C. (iv)) by registration of a land charge. Rights of pre-emption and options to purchase.

As to covenants running with the reversion or the term, see ss. 78—80, 138—142. Covenants running with the land.

(2) This section applies where the covenant, agreement or condition is contained in any instrument—

(a) creating a term of years absolute, or

(b) varying the rights of the lessor or lessee under the instrument creating the term.

Thus the s. applies to the lease or underlease, and to any instrument varying the lease or underlease, which contains the covenant or condition.

Saving of certain legal estates and statutory powers.

7.—(1) A fee simple which, by virtue of the Lands Clauses Acts, the School Sites Acts, or any similar statute, is liable to be divested, is for the purposes of this Act a fee simple absolute, and remains liable to be divested as if this Act had not been passed.

Fee simple "absolute."

Though liable to be divested by any such statute, the fee simple remains "absolute" for the purposes of s. 1 (1), *sup.*; also for the purposes of Part I. of the 1st Sch., hence is not converted into an equitable interest.

(2) A fee simple vested in a corporation which is liable to determine by reason of the dissolution of the corporation is, for the purposes of this Act, a fee simple absolute.

Fee simple "determinable."

A fee simple within this sub-s. is not converted into an equitable interest. In other cases fees simple determinable whether by limitation or condition (see Challis, R. P., 2nd ed., pp. 224—35, 302; Goodeve, R. P., 5th ed. pp. 192—6) are converted into equitable interests: 1st Sch., Pt. I., *inf.*; and see s. 1 (1) (a), *sup.* But a person entitled to a fee, whether determinable by limitation or condition (S. L. A., 1925, ss. 20 (1) (iii), 117 (1) (iv)) is a person having the powers of a tenant for life over the fee simple (*ib.*), hence acquires the legal fee simple under 1st Sch., Pt. II., para. 5, *inf.*

(3) The provisions of—

33 & 34 Vict. c. 23.

(a) the Forfeiture Act, 1870, in regard to the land of a convict;

59 & 60 Vict. c. 25.

(b) the Friendly Societies Act, 1896, in regard to land to which that Act applies;

(c) any other statutes conferring special facilities or prescribing special modes (whether by way of registered memorial or otherwise) for disposing of or acquiring land, or providing for the vesting (by conveyance or otherwise) of the land in trustees or any person, or the holder for the time being of an office or any corporation sole or aggregate (including the Crown);

shall remain in full force.

This subsection does not authorise an entailed interest to take effect otherwise than as an equitable interest.

Forfeiture Act, 1870.

A convict will still be able to make title by means of his administrator under the Act of 1870.

Friendly Societies Act, 1896.

The property of friendly societies registered under the Act of 1896 vests under ss. 49 and 50 in the trustees from time to time of the society appointed under s. 25 who can deal with the property under s. 47.

"Other statutes."

For instance: Lands Clauses Act, 1845, s. 77; Private Acts vesting the property of insurance societies in trustees whose names are enrolled at the Central Office; the Acts relating to the vesting of certain estates in the Crown as a corporation sole; see also s. 208.

Entailed interests.

As to entailed interests, see s. 130; and as to disentailing assurances, s. 133.

(4) Where any such power for disposing of or creating a legal estate is exercisable by a person who is not the estate owner, the power shall, when practicable, be exercised in the name and on behalf of the estate owner.

"Estate owner" the person to convey.

This gives a statutory power of attorney to convey in the name of the estate owner, for it is simpler to trace a title from A. to B. and from B. to C., than from A. to B. and then from X., a person in whom it is not vested, to C.

For other examples of the same principle, see next s.; also ss. 88 and 89.

Powers of attorney.

As to powers of attorney, see ss. 123—129, *inf.*; see also the saving in s. 1 (7), *sup.*, recognising that a legal estate can be passed by a conveyance on behalf of the estate owner. A tenant for life or trustee going abroad may give a power of attorney: T. A., 1925, s. 25.

"When practicable."

In some cases it will not be known who the estate owner is, *e.g.*, on conveyances under Lands Clauses Act, 1845, s. 77, then it will only be possible to name the last known owner, to define him as "the estate owner," and make that expression include whoever is such owner.

Execution of powers of attorney by corporations or individuals.

Under s. 74 (4), *inf.*, a corporation aggregate may appoint an officer to sign the name of the grantor of a power given to the corporation, while an individual can, *ib.*, sub-s. (3), sign the name of a corporation and affix his own seal.

Saving of certain legal powers to lease.

8.—(1) All leases or tenancies at a rent for a term of years absolute authorised to be granted by a mortgagor or mortgagee or by the Settled Land Act, 1925, or any other statute (whether or not extended by any instrument) may be granted in the name and on behalf of the estate owner by the person empowered to grant the same, whether being an estate owner or not, with the same effect and priority as if this Part of this Act had not been passed; but this section does not (except as respects the usual qualified covenant for quiet enjoyment) authorise any person granting a lease in the name of an estate owner to impose any personal liability on him.

(2) Where a rentcharge is held for a legal estate, the owner thereof may under the statutory power or under any corresponding power, create a legal term of years absolute for securing or compelling payment of the same; but in other cases terms created under any such power shall, unless and until the estate owner of the land charged gives legal effect to the transaction, take effect only as equitable interests.

Leases by mortgagor and mortgagee.

As to leases by a mortgagor or mortgagee in possession, or by the receiver appointed by a mortgagee, see s. 99, *inf.*

Statutory powers of leasing.

For leases under the S. L. A., 1925, see ss. 41—48 of that Act, and as to extended powers: *ib.*, ss. 108—9; the tenant for life will be the estate owner, he has an inalienable right to have the settled land vested in him: *ib.*, s. 106. These powers of leasing can be exercised by charity trustees, *ib.*, s. 29, who could sign on behalf of the official trustee of charity lands. They are also exercisable by trustees for sale: s. 28, *inf.*; and by personal representatives: Ad. of E. A., 1925, s. 39.

Covenant for quiet enjoyment.

The qualified covenant for quiet enjoyment is usually inserted to limit the liability of the lessor.

Demise by owner of a rentcharge.

Under sub-s. (2) the owner of a perpetual rentcharge or a rentcharge held for a term of years absolute will by virtue of s. 121 be able to create a legal term for raising the rentcharge. But if the rentcharge, such as a jointure, is only held for life, the jointress can only create an equitable term and then require the estate owner, under s. 3, *sup.*, or S. L. A., 1925, s. 16. to raise the money or clothe the equitable term with a legal estate.

Invalid leases.

For powers to confirm invalid leases, see ss. 66 and 152, *inf.*; also S. L. A., 1925, ss. 43 (ii) and 64.

Vesting orders and dispositions of legal estates operating as conveyances by an estate owner.

9.—(1) Every such order, declaration, or conveyance as is hereinafter mentioned, namely—

(a) every vesting order made by any court or other competent authority;

(b) every vesting declaration (express or implied) under any statutory power;

(c) every vesting instrument made by the trustees of a settlement or other persons under the provisions of the Settled Land Act, 1925;

(d) every conveyance by a person appointed for the purpose under an order of the court or authorised under any statutory power to convey in the name or on behalf of an estate owner;

(e) every conveyance made under any power reserved or conferred by this Act,

which is made or executed for the purpose of vesting, conveying, or creating a legal estate, shall operate to convey or create the legal estate disposed of in like manner as if the same had been a conveyance executed by the estate owner of the legal estate to which the order, declaration, vesting instrument, or conveyance relates.

Vesting orders, &c.

For vesting orders, see, *e.g.*, ss. 3 (5), 30, 50 (2), 88 (2), 89 (2), 90, 91, 181, 195 (2); also T. A., 1925, ss. 44—49; S. L. A., 1925, ss. 12 and 16 (7); Ad. of E. A., 1925, ss. 38 (2), 43 (2).

"Other competent authority": *e.g.*, the Charity Commissioners or Board of Education in regard to charity land.

As to vesting declarations, see T. A., 1925, s. 40; also ss. 88 (3) and 89 (3), *inf.*

As to vesting instruments, see S. L. A., 1925, ss. 4—10, and 2nd Sch.

As to appointing a person to convey, see the references to "vesting orders," *sup.*

For statutory powers to convey in the name of an estate owner, see ss. 7 and 8, *sup.*, and notes thereto.

For reservation of powers, see ss. 7 (3) and 8; as to powers conferred, see ss. 22, 28, 30, 51, 88, 89.

(2) Where the order, declaration, or conveyance is made in favour of a purchaser, the provisions of this Act relating to a conveyance of a legal estate to a purchaser shall apply thereto.

See s. 2 (1) (iv), *sup.*, and s. 204, *inf.*, as to orders being conclusive.

Overreaching effect of orders.

(3) The provisions of the Trustee Act, 1925, relating to vesting orders and orders appointing a person to convey shall apply to all vesting orders authorised to be made by this Part of this Act.

15 Geo. 5, c. 19.

See T. A., 1925, ss. 44—50.

Provisions of T.A. made applicable.

10.—(1) Where title is shown to a legal estate in land, it shall be deemed not necessary or proper to include in the abstract of title an instrument relating only to interests or powers which will be over-reached by the conveyance of the estate to which title is being shown; but nothing in this Part of this Act affects the liability of any person to disclose an equitable interest or power which will not be so over-reached, or to furnish an abstract of any instrument creating or affecting the same.

Title to be shown to legal estates.

The operation of this s. is best illustrated by the epitomes of abstracts in the 6th Sch. Further epitomes are given in 1 Prid., 22nd ed., Ch. V.

Title to legal estates.

"Interests or powers which will be overreached": this is not confined to equitable interests shown to be overreached by s. 2, *sup.*, but includes legal estates which are overreached, *e.g.*, subsequent mortgage terms when a prior mortgagee sells: ss. 88, 89, 101; also legal estates which are overreached by reason of a "puisne mortgage" not being registered: s. 97 (3); 1st Sch., Pt. VII., para. 6; Pt. VIII., para. 5; L. C. A., 1925, ss. 10 Class C. (i), 13 (2), 14 (2); also legal terms forming part of the limitations of a settlement: S. L. A., 1925, s. 72. The overreaching powers conferred by this s. are exercisable by trustees for sale: s. 28, *inf.*; and by personal representatives: s. 33; Ad. of E. A., 1925, s. 35.

Over-reaching legal estate.

As to equitable interests which will not be overreached, see s. 2 (3), *sup.*, ss. 13, 14, 197—8, *inf.*; S. L. A., 1925, s. 72 (2) (i) (ii) (iii).

Equitable interests not overreached.

(2) A solicitor delivering an abstract framed in accordance with this Part of this Act shall not incur any liability on account of an omission to include therein an instrument which, under this section, is to be deemed not necessary or proper to be included, nor shall any

liability be implied by reason of the inclusion of any such instrument.

Duties of solicitors respecting abstracts.

This sub-s. is merely protective. See also s. 182, *inf.*

Registration in Middlesex and Yorkshire as respects legal estates.

11.—(1) It shall not be necessary to register a memorial of any instrument made after the commencement of this Act in any local deeds registry unless the instrument operates to transfer or create a legal estate, or to create a charge thereon by way of legal mortgage; nor shall the registration of a memorial of any instrument not required to be registered affect any priority.

Registration of memorials as respects legal estates.

An "instrument" does not include an Act of Parliament: s. 205 (1) (viii); but Private Acts of Parliament transferring or creating a legal estate must still be registered; the s. does not apply to them. Also caveats must be registered in the Yorkshire registers as hitherto, for this s. only deals with memorials.

A "charge by way of legal mortgage," see s. 1 (2) (c), is treated as a legal estate.

"Puisne mortgages."

The registration of a memorial of a "puisne mortgage," as defined in L. C. A., 1925, s. 10, Class C. (i), will render it unnecessary to register it as a land charge only to the extent of the land within the jurisdiction of the local registry; if the mortgage affects land outside such jurisdiction it must be registered as a land charge, *ib.*, unless the land is registered under the L. R. A., 1925, in which case the mortgage must be protected on the register under s. 59 (2). See also s. 97 (3), *inf.*, and 1st Sch., Pt. VII., para. 6; Pt. VIII., para. 5.

Registration gives notice.

The registration of a memorial operates to give notice: s. 197, *inf.*; but as to the restrictions on constructive notice, see s. 199. As to tacking and further advances, see s. 94. As to registered land: L. R. A., 1925, s. 30.

Priorities.

Priorities are not affected by the registration of a memorial of an instrument not registrable, nor does such registration give notice: s. 197 (2).

Exclusion of equitable interests.

Equitable interests are no longer registrable in a local deeds register because purchasers, including mortgagees and lessees (s. 205 (1) (xxi)) are no longer, as a general principle, concerned therewith; they are left to be protected under the L. C. A., 1925, for which purpose the Yorkshire registers are, to some extent, made use of, or by the provisions under which capital money arising under a trust for sale or a settlement must be paid to at least two trustees or a trust corporation.

(2) Probates and letters of administration shall be treated as instruments capable of transferring a legal estate to personal representatives.

Wills and intestacies.

Subject to the exceptions in S. L. A., 1925, s. 110 (2) (i) (ii) (iii), a purchaser is no longer concerned with a devise or bequest in a will, or with the beneficial devolution on an intestacy, but must concern himself solely with the probate or letters of administration, as evidencing the passing of the legal estate to the personal representatives: Ad. of E. A., 1925, ss. 1, 22—24; and the subsequent assent (if any) in writing in favour of the persons interested: *ib.*, s. 36.

Assents.

The assents, whether made under this s. or under the S. L. A., 1925, s. 8, 2nd Sch., para. 2, must be registered as transferring legal estates. For forms of assents, see L. P. A., 1925, 5th Sch., Forms Nos. 8 and 9; S. L. A., 1925, 1st Sch., Form No. 5.

(3) Memorials of all instruments capable of transferring or creating a legal estate or charge by way of legal mortgage, may, when so operating, be registered.

New assurances capable of transferring legal estates.

An assent by personal representatives is a new form of assurance: see notes to last sub-s. So, also, are reservations made under s. 65, *inf.*; deeds of confirmation made under s. 66; enlargement and vesting deeds made by a mortgagee on acquiring a title under the Limitation Acts: ss. 88 (3) and 89 (3); vesting orders made under ss. 9, 90, 91 and 181. An implied vesting declaration can be made under T. A., 1925, s. 40.

Titles registered under L. R. A., 1925.

When the title to land is registered under the L. R. A., 1925, it ceases to be subject to the jurisdiction of a local deeds register, as respects the estate registered: L. R. A., 1925, s. 135.

12. Nothing in this Part of this Act affects the operation of any statute, or of the general law for the limitation of actions or proceedings relating to land or with reference to the acquisition of easements or rights over or in respect of land.

Limitation and Prescription Acts.

Acquisition of legal estates under the Limitation Acts.

As to the operation of the Limitation Acts (s. 205 (1) (xii)) in regard to mortgagees, see ss. 88 (3) and 89 (3), under which an enlargement or vesting deed has to be executed to get in the legal estate of the mortgagor.

Legal estates, get in.

Under the 1st Sch., Pt. II., legal estates will on 1st January, 1926, be vested in the person entitled thereto, and as respects enfranchised land, see L. P. (Amendment) A., 1924, para. 3 (2) (h).

As to registered land, see L. R. A., 1925, s. 75, and rules made thereunder.

The overreaching powers conferred by this Act take effect subject to the rights acquired, or in course of being acquired, under the Limitation or Prescription Acts, or under a presumed grant.

13. This Act shall not prejudicially affect the right or interest of any person arising out of or consequent on the possession by him of any documents relating to a legal estate in land, nor affect any question arising out of or consequent upon any omission to obtain or any other absence of possession by any person of any documents relating to a legal estate in land.

Effect of possession of documents.

Mortgages by deposit of documents.

This s. saves the right to create a good equitable security by the deposit of the title deeds relating to the legal estate. Nothing in the Act frees a purchaser from the obligation to see that the deeds are in the proper custody: see the savings in s. 2 (3) (i), *sup.*, and in S. L. A., 1925, s. 21 (2) (i). As to registered land, see L. R. A., 1925, s. 66.

"Puisne mortgages."

The possession of the deeds is the material factor in ascertaining whether or not a mortgage is to be treated as a "puisne mortgage": s. 97 (3), 1st Sch., Pt. VII., para. 6; Pt. VIII., para. 5; L. C. A., 1925, s. 10, Class C. (i).

Tacking and further advances.

As to tacking and further advances, see s. 94, *inf.*; the operation of that s. is saved in ss. 197 (3) and 198 (2). As to registered land, see L. R. A., 1925, s. 30.

The right of first mortgagees to documents.

A first mortgagee's right to possession of the documents is saved by ss. 85 (1) and 86 (1), notwithstanding that the mortgage is by demise, sub-demise, or charge by way of legal mortgage; this removes the doubt expressed in 1 Davidson, 5th ed., 493; *ib.*, 4th ed., 582. But in the case of registered land

the land certificate must be deposited at the land registry when a charge is registered: L. R. A., 1925, s. 65.

Interests of persons in possession.

14. This Part of this Act shall not prejudicially affect the interest of any person in possession or in actual occupation of land to which he may be entitled in right of such possession or occupation.

Obligations of purchaser to make enquiries on the land.

This s. does not merely cover rights in course of being acquired under the Limitation or Prescription Acts, these are sufficiently protected by s. 12, *sup.*; but the rights of persons in receipt of rents and profits (see "possession," s. 205 (1) (xix)) and of the tenant or trespasser in actual occupation. The object is to render it necessary for an intending purchaser to make the usual enquiries on the land, to see who is in occupation and to whom rent is paid. As to a discussion on "possession," see article by the late Sir Howard Elphinstone in 56 Sol. J., 220.

As to registered land, the corresponding provision is in L. R. A., 1925, s. 70 (1) (g); the register only takes the place of an abstract of title.

Conveyances transfer the possession.

But after 1925 conveyances will operate to transfer the possession or right to the rents and profits without actual entry, ss. 51 and 149, *inf.*, in the same way as assurances taking effect under Statute of Uses operated.

Presumption that parties are of full age.

15. The persons expressed to be parties to any conveyance shall, until the contrary is proved, be presumed to be of full age at the date thereof.

New presumption.

This is a new legal presumption, rendered necessary because a conveyance of a legal estate to an infant will not pass it to him: ss. 1 (6), 19, 20; 1st Sch., Pt. II., para. 7 (g); Pt. III.; S. L. A., 1925, ss. 26—27, 2nd Sch., para. 3.

But for this presumption it might have been necessary to require proof in all cases that the conveying parties were of full age.

For the meaning of "conveyance," see s. 205 (1) (ii); it includes an assent.

Death Duties.

Liability for death duties.

16.—(1) A personal representative shall be accountable for all death duties which may become leviable or payable on the death of the deceased in respect of land (including settled land) which devolves upon him by virtue of any statute or otherwise.

"Personal representative": s. 205 (1) (xviii); "death duties": *ib.* (iv); "land": *ib.* (ix); "settled land": *ib.* (xxvi); S. L. A., 1925, ss. 2, 117 (1) (xxiv).

Devolution of land on death.

Land which is not settled devolves, after 1925, on the personal representative under Ad. of E. A., 1925, s. 1; for the meaning of "real estate" in that s. see *ib.*, s. 3. As to "settled land," see *ib.*, ss. 22—24. As to the grant of administration on an intestacy as respects land settled previously to the death: Jud. A., 1925, s. 162.

As regards trust estates after 1881 until 1926, see C. A., 1881, s. 30; Cop. A., 1894, s. 88; Wolst., 10th ed., 98—102. As to freeholds and the equitable interest in copyholds after 1897 till 1926: L. T. A., 1897, Pt. I.; Wolst., 10th ed., 206—8; *Re Griggs*, 1914, 2 Ch. 547. "Or otherwise" chattels real devolved on the personal representative under the general law before 1926.

A personal representative might take an estate *pur autre vie* as a named occupant or under s. 12 of the Statute of Frauds. As to special occupancy, see Ad. of E. A., 1925, s. 45.

Duties and indemnities of personal representatives as respects death duties.

As respects settled land, the personal representatives will be satisfied that provision has been or will be made for the payment of duties before they assent: S. L. A., 1925, s. 8 (3) (b). If they convey by deed an indemnity term can be reserved: *ib.*, sub-s. (6). Generally personal representatives, as a condition of giving an assent, may require security for the discharge of the duties, but are not entitled to postpone the giving of an assent merely by reason of the subsistence of the duties if reasonable arrangements have been made for the discharge: Ad. of E. A., 1925, s. 36 (10); they can assent subject to a legal estate: *ib.*

Possession pending an assent.

An assent does not interfere with the powers of the court, save as respects a purchaser: *ib.*, s. 38 (2). Before an assent is made possession can be given to the persons entitled, without prejudice to the right of the personal representatives to resume possession and to convey as if they were in possession: *ib.*, s. 43.

(2) In every other case the estate owner (other than a purchaser who acquires a legal estate after the charge for death duties has attached and free from such charge), shall be accountable for all the duties aforesaid which become leviable or payable in respect of his estate in the land or any interest therein capable of being overreached by his conveyance, being a conveyance to a purchaser made under the Settled Land Act, 1925, or pursuant to a trust for sale.

Persons accountable.

In the majority of cases duties become payable on the death of the estate owner (whether or not the land is settled), and the persons accountable will be the personal representatives under sub-s. (1); but on the death, for instance, of a jointress, the land will not pass to personal representatives, hence the estate owner (s. 1 (4), *sup.*) is made accountable by this sub-s. Compare Fin. A., 1894, s. 8.

"Free from such charge": for the cases where a purchaser for money's worth takes free from the charge, see s. 17, *inf.*

Overreachable interests.

As to interests capable of being overreached under S. L. A., 1925, see s. 72 of that Act; as to those capable of being overreached under a trust for sale, see s. 2, *sup.*, and s. 28, *inf.* Also Ad. of E. A., 1925, s. 39.

(3) For the purpose of raising the duty, and the costs of raising the same, the personal representative or other person accountable as aforesaid shall have all the powers which are by any statute conferred for raising the duty.

Power to raise money for payment of duty.

For the statutory powers to raise the duty, see Fin. A., 1894, s. 9; S. L. A., 1925, s. 71 (1) (i); applied to trustees for sale by s. 28, *inf.*, and to personal representatives by Ad. of E. A., 1925, s. 39.

(4) Nothing in this Act shall alter any duty payable in respect of land, or impose any new duty thereon, or affect the remedies of the Commissioners of Inland

Revenue against any person other than a purchaser or a person deriving title under him.

Saving of existing duties and remedies.

See also Ad. of E. A., 1925, s. 53 (3), 1st Sch., Pt. II., para. 8 (b).

As to the remedies of the Commissioners, see Fin. A., 1894, s. 8; Succ. D. A., 1853, s. 9; Leg. D. A., 1796, s. 13.

Registered land.

As to registered land, see L. R. A., 1925, s. 73.

(5) Notwithstanding that any duties are by this section made payable by the personal representative or other person aforesaid, nothing in this Part of this Act shall affect the liability of the persons beneficially interested or their respective interests in respect of any duty, and they shall accordingly account for or repay the same and any interest and costs attributable thereto to the said Commissioners or to the personal representative or other person accountable as aforesaid, as the case may require.

Saving of liability of beneficiaries.

Thus the beneficiaries will either make the payment direct to the Commissioners by the order of the personal representatives or estate owner, or will repay the amount advanced by the persons accountable, as the case requires.

(6) Nothing in this Part of this Act shall impose on a personal representative, tenant for life, statutory owner, trustee for sale, or other person in a fiduciary position, as such, any liability for payment of duty, in excess of the assets (including land) vested in him or in the trustees of the settlement which may for the time being be available in his hands or in the hands of such trustees for the payment of the duty or which would have been so available but for his or their own neglect or default, or impose a charge for duties on leasehold land, or render a mortgagee liable in respect of any charge for duties which is not paramount to his mortgage.

Indemnity to trustees, &c.

The personal representatives or estate owner having been made accountable, the principle laid down in T. A., 1925, s. 30, is made applicable.

Leaseholds.

There is no charge in any taxing statute on leaseholds for duty; now that freeholds are, for purposes of devolution, put on the same footing as leaseholds, it might be possible to remove the charge.

Mortgagee.

A mortgagee may be an estate owner in right of his mortgage term.

(7) The said Commissioners, on being satisfied that a personal representative or other person accountable has paid or commuted or will pay or commute all death duties for which he is accountable in respect of the land or any part thereof, shall, if required by him, give a certificate to that effect, which shall discharge from any

further claim for such duty the land to which the certificate extends, and the production of such certificate to the land registrar or other proper officer shall be a sufficient authority to enable him to cancel any land charge registered in respect of the duty so far as it affects the land to which the certificate extends.

Obligation to grant certificate of discharge.

This follows the principle in Fin. A., 1894, s. 11, and applies it to all classes of duty: s. 205 (1) (iv).

As to land charges for duty, see L. C. A., 1925, s. 10, Class D. (i); and as to cancelling land charges, *ib.*, s. 19 (1) (b).

Protection of purchasers from liability for death duties.

17.—(1) Where a charge in respect of death duties is not registered as a land charge, a purchaser of a legal estate shall take free therefrom, unless the charge for duties attached before the commencement of this Act and the purchaser had notice of the facts giving rise to the charge.

See L. C. A., 1925, s. 10, Class D. (i), for Inland Revenue charges.

"Purchaser" only means a purchaser for money's worth: s. 205 (1) (xxi).

"Notice of the facts giving rise to the charge": see Fin. A., 1894, ss. 8 (18), 9 (1); Succ. D. A., 1853, s. 52.

As equitable interests will in the main be kept off the title, a purchaser will seldom have notice.

(2) Where a charge in respect of death duties is not registered as a land charge, the person who conveys a legal estate to a purchaser, and the proceeds of sale, funds, and other property (if any) derived from the conveyance and the income thereof shall (subject as in this Act provided) be or remain liable in respect of and stand charged with the payment of the death duties the charge for which is over-reached by the conveyance, together with any interest payable in respect of the same.

Shifting of the charge.

This shifts the charge, created after 1925, to the proceeds of sale, unless the charge is protected by a land charge.

"Subject as in this Act provided": see s. 16 (6), *sup.*, for the protection of persons in a fiduciary position.

(3) Notwithstanding that any death duties may be payable by instalments, on a conveyance of a legal estate by way of sale exchange or legal mortgage all death duties payable in respect of the land dealt with and remaining unpaid shall, if the charge for the duties is over-reached by such conveyance, immediately become payable and carry interest at the rate of four pounds per centum per annum from the date of the conveyance:

Provided that, where by reason of this subsection an amount is paid or becomes payable for duties and interest in excess of the amount which would have been payable if the duties had continued to be paid by instalments, such excess shall be repaid or allowed as a deduction by the Commissioners of Inland Revenue.

Acceleration of payment of instalments.

See also Fin. A., 1894, s. 6 (8). When the duties are overreached, the funds derived from the conveyance, *i.e.*, the purchase money, equality money or mortgage money, will be available to answer the duty. If no equality money is paid, the duties must, if other funds are not available, be raised by mortgage. The duties do not become immediately payable by reason of a grant of a lease, or a mortgage by deposit of documents.

Refunding of excess.

If a successor having only a limited interest dies before all the instalments of succession duty are paid, no further instalments are payable in respect of that succession: Succ. D. A., 1853, s. 21; Cust. In. Rev. A., 1888, s. 22 (3) (a); see also *Lord Lilford* v. *A.-G.*, 1867, 2 H. L. 63.

If by reason of the above sub-s. the instalments which would have lapsed have been prepaid, the amount must be repaid or allowed as a deduction, but without interest. The same point may arise in respect of estate duty where the land is inalienably entailed and the successor has not elected that the duty should be a charge on the settled land under Fin. A., 1922, s. 44; see also Fin. A., 1894, s. 5 (5).

For a similar refunding provision, see Succ. D. A., 1853, s. 40.

(4) Except in the case of a conveyance to a purchaser, a conveyance shall take effect subject to any subsisting charge or liability for payment of the duties and interest, if any, notwithstanding that the charge for duties may not have been registered.

Object of registering land charge.

A land charge will only be registered to prevent the charge, confined to freehold land, being overreached in favour of a purchaser for money's worth: L. C. A., 1925, s. 13 (2).

In the majority of cases it will not be worth while for the Inland Revenue to register a charge.

(5) This section does not apply to registered land.

Registered land.

For the provisions dealing with the position of a purchaser as respects death duties affecting registered land, see L. R. A., 1925, s. 73.

Application of capital money in discharge of death duties.

18.—(1) Capital money liable to be laid out in the purchase of land to be settled in the same manner as the land in respect of which any death duties may have become payable, and personal estate held on the same trusts as the proceeds of sale of land, being land held on trust for sale in respect of which any such duties may have become payable, may, by the direction of the tenant for life, statutory owner, or trustee for sale who is accountable, and although the duty is only payable in respect of an interest which is or is capable of being over-reached by a conveyance to a purchaser, be applied

in discharging all or any of the duties aforesaid and the costs of discharging the same.

Enlargement of fund available.

This enlargement of the source from which the duties can, in the first instance, be discharged was rendered necessary by reason of the estate owner (s. 16 (2), *sup.*) being made an accountable party.

Not only "capital money" (s. 205 (1) (xxvi)) but investments, *e.g.*, settled by a deed of even date with a conveyance on trust for sale and held with the land, are made available.

(2) Where the duties would not, except by virtue of the last subsection, be payable out of the capital money or personal estate aforesaid—

(a) the amount so paid shall be repaid by the person liable for the duty to the trustees of the settlement or the trustees for sale by the like instalments and at the like rate of interest by and at which the unpaid duty and the interest thereon might have been paid, or, where the land has been conveyed to a purchaser, would have been paid if the land had not been so conveyed;

(b) the interest of the person so liable, remaining subject to the settlement of the land or of the proceeds of sale, shall stand charged with the repayment of the instalments and the interest aforesaid;

(c) the trustees of the settlement or the trustees for sale shall be entitled to recover and receive any excess of duty which may become repayable by the said Commissioners.

Recoupment by the persons liable.

For cases where capital money would, independently of the s., be available for payment of estate duty: Fin. A., 1894, s. 9 (7); *Re Egmont, S. E.*, 1912, 1 Ch. 252; S. L. A., 1925, s. 73 (1) (ii).

"Where the land has been conveyed to a purchaser" the duty immediately becomes payable: s. 17 (3), *sup.*; Fin. A., 1894, s. 6 (8).

The charge imposed by para. (b) is for the benefit of the estate owner or trustees who advance the money to pay the duty.

For a power to recover excess, see s. 17 (3), *sup.*

Infants and Lunatics.

Effect of conveyances of legal estates to infants.

19.—(1) A conveyance of a legal estate in land to an infant alone or to two or more persons jointly both or all of whom are infants, shall have such operation as is provided for in the Settled Land Act, 1925.

Beneficial legal estates of infants.

Under S. L. A., 1925, s. 27 (1), a conveyance of a legal estate to one or more infants for their own benefit operates only as an agreement to execute a settlement.

During a minority the S. L. A. powers are exercisable either by the personal representatives in whom the land is vested or by the trustees of the settlement: *ib.*, s. 26.

Either the land is "settled" or is held on trust for sale.

But where an infant is entitled for life jointly with a person of full age, then the person of full age is the tenant for life: *ib.*, s. 19 (3).

Under S. L. A., 1925, 2nd Sch., para. 3, the beneficial legal estate of an infant or the settled land, if the infant would, if of full age, have been a tenant for life, is, on 1st January, 1926, vested in the trustees of the settlement, or, if none, in the Public Trustee till they are appointed: see 1st Sch., Pt. III., para. 1, *inf.*

A trust for sale is implied under the next sub-s. where the infant would, in place of a life interest, have taken a legal estate jointly with a person of full age.

Summary.

The result may be thus summarised:—

(a) Where infants only are interested the land is settled land: S. L. A., 1925, s. 26.

(b) Where infants are interested with persons of full age, then—

(i) If life interests are limited, the land is settled land and the persons of full age are the tenants for life: *ib.*, s. 19 (3).

(ii) In other cases the land is held on trust for sale: next sub-s.

(iii) In all cases the persons of full age interested with the infant take the legal estate either as tenants for life or as trustees for sale.

The vesting of legal estates.

In no case can an infant hold a legal estate: s. 1 (6), *sup.*; nor does 1st Sch., Pt. II., *inf.*, vest any legal estate in an infant: *ib.*, para. 7 (g); but that Sch. does, on 1st January, 1926, vest all settled land in the tenant for life of full age, or the statutory owners, or personal representatives: *ib.*, paras. 5, 6 (c); and vest land held on trust for sale in the trustees for sale: *ib.*, para. 6 (b).

(2) A conveyance of a legal estate in land to an infant, jointly with one or more other persons of full age, shall operate to vest the legal estate in the other person or persons on the statutory trusts, but not so as to sever any joint tenancy in the net proceeds of sale or in the rents and profits until sale, or affect the right of a tenant for life or statutory owner to have settled land vested in him.

Implied trust for sale.

The "statutory trusts" imply a trust for sale: s. 35, *inf.*; thus the land in this case will be held on trust for sale by the persons of full age, unless it appears from the transaction that life interests are to be taken, in which case the persons of full age will be tenants for life during the minority: S. L. A., 1925, s. 19 (3).

Vesting of legal estate.

Under 1st Sch., Pt. II., para. 2, *inf.*, a legal estate vested in an infant and persons of full age beneficially on 31st December, 1925, becomes vested in the persons of full age on trust for sale, and if there is only one person of full age, power is given to appoint new trustees: *ib.*

(3) The foregoing provisions of this section do not apply to conveyances on trust or by way of mortgage.

Beneficial estates.

This is inserted to show that sub-ss. (1) and (2) are confined to beneficial legal estates. Trust and mortgage estates are dealt with *inf.*

As to vesting orders of beneficial interests: T. A., 1925, s. 53.

(4) A conveyance of a legal estate to an infant alone or to two or more persons jointly, both or all of whom are infants, on any trusts, shall operate as a declaration of trust and shall not be effectual to pass any legal estate.

Trust estates of infants.

This is supplemented by 1st Sch., Pt. III., para. 3, under which legal estates vested solely in infants are transferred to the Public Trustee until new trustees are appointed. Also by para. 4 legal estates vested in an infant jointly with persons of full age are transferred to the persons of full age on the requisite trusts.

Vesting of trust estates.

The provisions in Part III. of the 1st Sch. do not divest a legal estate in an administrator appointed during a minority, nor prevent a tenant for life of full age or statutory owner from acquiring a legal estate under Part II. of that Sch.

Infant executor or trustee.

The appointment of an infant as executor does not pass any legal estate until probate is granted to him when of full age: Ad. of E. A., 1925, s. 20; Jud. A., 1925, s. 165. Probate will not be granted to him till of full age: *ib.* Nor can he be appointed a trustee: s. 20, *inf.*

(5) A conveyance of a legal estate in land to an infant jointly with one or more other persons of full age on any trusts shall operate as if the infant had not been named therein, but without prejudice to any beneficial interest in the land intended to be thereby provided for the infant.

Trust estates held jointly with an infant.

The principle throughout is that where the legal estate is joint, the persons of full age should take it. This is supplemented, to get in legal estates so vested on 1st January, 1926, by 1st Sch., Pt. III., para. 4, *inf.*

(6) A grant or transfer of a legal mortgage of land to an infant shall operate only as an agreement for valuable consideration to execute a proper conveyance when the infant attains full age, and in the meantime to hold any beneficial interest in the mortgage debt in trust for the persons for whose benefit the conveyance was intended to be made:

Provided that, if the conveyance is made to the infant and another person or other persons of full age, it shall operate as if the infant had not been named therein, but without prejudice to any beneficial interest in the mortgage debt intended to be thereby provided for the infant.

Infant's legal mortgages.

This precludes a legal mortgage (s. 205 (1) (xvi), *inf.*) being granted or transferred to an infant, because if it were vested in him he could not deal with it.

Vesting of legal mortgages.

As to the vesting of legal mortgages subsisting on 1st January, 1926, see 1st Sch., paras. 3 and 4, *inf.*

Infants not to be appointed trustees.

20. The appointment of an infant to be a trustee in relation to any settlement or trust shall be void, but

without prejudice to the power to appoint a new trustee to fill the vacancy.

Under T. A., 1925, s. 36, express power is given to appoint new trustees in place of an infant.

General application of s.

This s. is not confined to land or legal estates; it extends to property generally, otherwise an infant might be a trustee of a fund impressed with a trust to purchase land.

If an infant has been appointed a trustee, he should be removed and a new trustee appointed in his place.

Receipts by married infants.

21. A married infant shall have power to give valid receipts for all income (including statutory accumulations of income made during the minority) to which the infant may be entitled in like manner as if the infant were of full age.

The object of this s. was to remove the difficulty of obtaining a valid receipt from a married woman, for if she married after 1883 her husband could not give a receipt on her behalf. Throughout this Act men and women have been treated on the same footing, hence no distinction is made in this s.

As to statutory accumulations, see T. A., 1925, s. 31.

Conveyances on behalf of lunatics and defectives and as to land held by them on trust for sale.

22.—(1) Where a legal estate in land (whether settled or not) is vested in a lunatic, or a defective, either solely or jointly with any other person or persons, his committee or receiver shall, under an order in lunacy or of the court, or under any statutory power, make or concur in making all requisite dispositions for conveying or creating a legal estate in the name and on behalf of the lunatic or defective.

"Lunatic," "defective," "committee" and "receiver": see s. 205 (1) (xiii), *inf.*

Form of conveyance.

"In the name": thus as respects legal estates the practice is made uniform. Formerly the committee when conveying under L. C. A., 1845, s. 7, conveyed in his own name: *Re Tugwell,* 1884, 27 Ch. D. 309. In future the lunatic or defective will be expressed to be made a party, and the committee or receiver will sign the name of the lunatic or defective, as was done in other cases: *cf.* S. L. A., 1925, s. 28.

(2) If land held on trust for sale is vested in a lunatic, or a defective, either solely or jointly with any other person or persons, a new trustee shall be appointed in his place, or he shall be otherwise discharged from the trust, before the legal estate is dealt with under the trust for sale or under the powers vested in the trustees for sale.

Appointment of new trustee in place of a lunatic.

Where the lunatic or defective is entitled in possession to some beneficial interest in the proceeds of sale, leave must be obtained from the judge or Master in Lunacy before a new trustee is appointed in his place by the con-

tinuing trustees: T. A., 1925, s. 36 (9). The reason for this restriction is that a new trust for sale might arise under ss. 34, 36, or 1st Sch., Pt. IV., *inf.*, and the trustee of full capacity might appoint a new trustee under T. A., 1925, s. 36, without due regard to the interests of the lunatic.

"The powers vested in the trustees for sale": see s. 28, *inf.*

Dispositions on Trust for Sale.

Duration of trusts for sale.

23. Where land has, either before or after the commencement of this Act, become subject to an express or implied trust for sale, such trust shall, so far as regards the safety and protection of any purchaser thereunder, be deemed to be subsisting until the land has been conveyed to or under the direction of the persons interested in the proceeds of sale.

This section applies to sales whether made before or after the commencement of this Act, but operates without prejudice to an order of any court restraining a sale.

This s. replaces the C. A., 1911, s. 10.

"Trust for sale": s. 205 (1) (xxix).

Rights of a purchaser taking under a trust for sale.

The s. restores the old practice, and removes any doubt arising from the remarks in *Re Tweedie & Miles*, 1884, 27 Ch. D. 315; *cf. Re Douglas & Powell*, 1902, 2 Ch. 296. The result is that a purchaser may rely on a trust for sale, notwithstanding he may have notice that the proceeds of sale have become absolutely vested in persons who are all *sui juris*.

Duration of power of sale.

As to the duration of a power of sale as distinguished from a trust for sale, see *Peters* v. *Lewes, &c. Co.*, 1881, 18 Ch. D. 429; *Re Cotton's Trustees & London School Board*, 1882, 19 *ib.* 624; *Re Lord Sudeley & Baines*, 1894, 1 Ch. 334; *Re Jump*, 1903, 1 Ch. 129; *Re Kaye & Hoyle*, 1909, 53 Sol. J. 520; but powers of sale, in relation to land, will, after 1925, have no operation save for the purpose of constituting S. L. A. trustees: S. L. A., 1925, s. 30; or conferring additional powers on a tenant for life: *ib.*, ss. 108, 109.

Powers of sale inoperative.

Implied trusts for sale.

For implied trusts for sale, see *Re Bourne*, 1906, 2 Ch. at p. 433 (surviving partner); s. 31, *inf.* (right of redemption barred); s. 32, *inf.* (personalty settlement); ss. 34, 35, 1st Sch., Pt. IV., *inf.*, and S. L. A., 1925, s. 36 (undivided shares); ss. 36, 37, 1st Sch., Pt. VI., *inf.* (joint tenancies and tenancies by entireties); s. 19 (2), 1st Sch., Pt. III., *inf.* (infants entitled to legal estate with person of full age); Ad. of E. A., 1925, s. 33 (intestacies); also if land is purchased in breach of trust, it becomes subject to a trust for sale. A trust to retain or sell creates a trust for sale: s. 25 (4).

Conveyance to persons interested.

As to conveyances to persons absolutely entitled to the net proceeds of sale, see the proviso to s. 3 (1) (b), *sup.*; also s. 34 (2), *inf.*

Order restraining a sale.

An order restraining a sale can be protected by registering a *lis pendens*: L. C. A., 1925, s. 2.

Fasciculus of ss. relating to trusts for sale.

Ss. 23—33 are a fasciculus of provisions relating to trusts for sale. With the exception of S. L. A., 1925, s. 36, provisions relating to trusts for sale no longer appear in connexion with settled land.

Appointment of trustees of dispositions on trust for sale.

24.—(1) The persons having power to appoint new trustees of a conveyance of land on trust for sale shall be bound to appoint the same persons (if any) who are

for the time being trustees of the settlement of the proceeds of sale, but a purchaser shall not be concerned to see whether the proper persons are appointed to be trustees of the conveyance of the land.

The curtain provided by a trust for sale.

This confirms the usual practice; a purchaser is not concerned with the trusts affecting the proceeds of sale, but the requirements of s. 27 (2) as to the payment of the purchase money must be complied with.

(2) This section applies whether the settlement of the proceeds of sale or the conveyance on trust for sale comes into operation before or after the commencement of this Act.

Retrospective.

As the s. confirms the old practice there is no objection to its being retrospective.

"Conveyance."

A "conveyance" on trust for sale includes an assent on trust for sale: s. 205 (1) (ii), 5th Sch., Form 9.

Power to postpone sale.

25.—(1) A power to postpone sale shall, in the case of every trust for sale of land, be implied unless a contrary intention appears.

"Power to postpone" means a power to postpone in the exercise of a discretion; it must be judicially exercised: s. 205 (1) (xxix). Advantage is taken of this s., when imposing an implied trust for sale, to leave out words referring to the power to postpone.

(2) Where there is a power to postpone the sale, then (subject to any express direction to the contrary in the instrument, if any, creating the trust for sale) the trustees for sale shall not be liable in any way for postponing the sale, in the exercise of their discretion, for any indefinite period; nor shall a purchaser of a legal estate be concerned in any case with any directions respecting the postponement of a sale.

Indemnity to trustees for sale and to purchasers.

Thus the trustees will be freed from liability if they act in good faith. If the trustees sell, a purchaser will get a good title, though the trust instrument directs a postponement: *cf. Re Horne's S. E.*, 39 Ch. D. 84; but this does not apply to a future trust for sale: s. 205 (1) (xxix).

(3) The foregoing provisions of this section apply whether the trust for sale is created before or after the commencement or by virtue of this Act.

Retrospective.

There can be no objection to the power to postpone being made retrospective, for it can be negatived by the trust instrument.

(4) Where a disposition or settlement coming into operation after the commencement of this Act contains a trust either to retain or sell land the same shall be

construed as a trust to sell the land with power to postpone the sale.

Trust to retain or sell.

This confirms the decision in *Re Crips*, 1906, 95 L. T. 865, followed in *Re Johnson*, 1915, 1 Ch. 435. It is conceived that *Re Hotchkys*, 1886, 32 Ch. D. 408, will no longer be followed. It will, as respects dispositions coming into operation after 1925, remove the doubt whether the land has to be treated as settled land or as subject to a trust for sale. This will make no practical difference to the beneficial interests, for after 1925 real and personal estate can be settled by similar limitations, and on an intestacy will devolve in the same way; but if the land is settled, title must be made by the tenant for life, while if it is held on trust for sale, the trustees for sale must make title. *Cf.* S. L. A., 1925, s. 20 (1) (viii).

Consents to the execution of a trust for sale.

26.—(1) If the consent of more than two persons is by the disposition made requisite to the execution of a trust for sale of land, then, in favour of a purchaser, the consent of any two of such persons to the execution of the trust or to the exercise of any statutory or other powers vested in the trustees for sale shall be deemed sufficient.

Provisions facilitating the making of title by trustees for sale.

Only two persons beneficially interested will have to concur in the conveyance, leaving the trustees, for their protection, to obtain any other consents expressed to be made necessary by the trust for sale.

Further, except in the case of charity land or where the appointment is made before 1926, there will not be more than four trustees to deal with: T. A., 1925, s. 34. See also ss. 3 (1) (b), 34 (2) as to conveyances purporting to vest land in more than four trustees.

Number of trustees.

As to the statutory powers, see s. 28.

"Statutory powers."

(2) Where the person whose consent to the execution of any such trust or power is expressed to be required in a disposition is not sui juris or becomes subject to disability, his consent shall not, in favour of a purchaser, be deemed to be requisite to the execution of the trust or the exercise of the power; but the trustees shall, in any such case, obtain the separate consent of the parent or testamentary or other guardian of an infant or of the committee or receiver (if any) of a lunatic or defective.

Disability of person whose consent would be required.

So far as a purchaser is concerned, a transaction will not be held up because a valid consent cannot be given. The trustees should protect themselves by getting the requisite consents before the contract is made. They will have to satisfy the purchaser that the person named in the "disposition" (s. 205 (1) (ii)) is subject to disability.

(3) The trustees for sale shall, so far as practicable, give effect to the wishes of the persons of full age for the time being beneficially interested in possession in the rents and profits of the land until sale, or, in case of dispute, of the majority (according to the value of their

combined interests) of such persons, but a purchaser shall not be concerned to see that such wishes are complied with.

Requirements of persons entitled to rents.

This is in accordance with the principle formerly adopted in deciding whether a sale should be ordered in a partition action, and gives effect to the general practice. It is made binding on trustees for sale because this Act creates so many implied trusts for sale: see note to s. 23, *sup.*

(4) This section applies whether the trust for sale is created before or after the commencement or by virtue of this Act.

Retrospective.

See also s. 207 (a), *inf.* "By virtue of the Act": see note to s. 23, *sup.*

Purchaser not to be concerned with the trusts of the proceeds of sale which are to be paid to two or more trustees or to a trust corporation.

27.—(1) A purchaser of a legal estate from trustees for sale shall not be concerned with the trusts affecting the proceeds of sale of land subject to a trust for sale (whether made to attach to such proceeds by virtue of this Act or otherwise), or affecting the rents and profits of the land until sale, whether or not those trusts are declared by the same instrument by which the trust for sale is created.

This is declaratory of the existing law; and see T. A., 1925, s. 14.

"Made to attach . . . by virtue of this Act": see ss. 3 (1) (b) and 35; 1st Sch., Pt. IV.

(2) Notwithstanding anything to the contrary in a disposition on trust for sale of land or in the settlement of the net proceeds, the proceeds of sale or other capital money arising under the disposition shall not be paid to or applied by the direction of fewer than two persons as trustees of the disposition, except where the trustee is a trust corporation, but this subsection does not affect the right of a sole personal representative as such to give valid receipts for or direct the application of the proceeds of sale or other capital money aforesaid; nor, except where capital money arises on a transaction, render it necessary to have more than one trustee.

Safeguard of two trustees.

The safeguard against mistake or fraud of having at least two trustees or a trust corporation (s. 205 (1) (xxviii)), where capital money falls to be received, is a fairly obvious reform; it became essential when additional powers (see s. 2) to overreach equitable interests were conferred. If a sole trustee is appointed or only one trustee remains, an additional or new trustee must be appointed: T. A., 1925, ss. 36, 41.

The restriction does not prevent a sole trustee granting a lease under s. 28, *inf.*, if no fine is taken.

Personal representative.

A sole personal representative can act under Ad. of E. A., 1925, s. 39, until the period of distribution arises, but if a beneficiary is an infant or there is a life interest, administration will not be granted to less than two individuals: Ad. of E. A., 1925, s. 12 (1); Jud. A., 1925, s. 160 (1).

During a minority or the subsistence of a life interest the court can appoint an additional personal representative: *ib.*, sub-s. (2).

As to the application of this Part to personal representatives: s. 33, *inf.*

Powers of management, &c. conferred on trustees for sale.

28.—(1) Trustees for sale shall, in relation to land or to manorial incidents and to the proceeds of sale, have all the powers of a tenant for life and the trustees of a settlement under the Settled Land Act, 1925, including in relation to the land the powers of management conferred by that Act during a minority: and (subject to any express trust to the contrary) all capital money arising under the said powers shall, unless paid or applied for any purpose authorised by the Settled Land Act, 1925, be applicable in the same manner as if the money represented proceeds of sale arising under the trust for sale.

All land acquired under this subsection shall be conveyed to the trustees on trust for sale.

The powers conferred by this subsection shall be exercised with such consents (if any) as would have been required on a sale under the trust for sale, and when exercised shall operate to overreach any equitable interests or powers which are by virtue of this Act or otherwise made to attach to the net proceeds of sale as if created by a trust affecting those proceeds.

This s. takes the place of S. L. A., 1882, s. 63, and gives the powers to the trustees for sale instead of the tenant for life of the proceeds of sale. For instance, the trustees can deal with the surface and minerals separately under S. L. A., 1925, s. 50, without any order of the court. If the trustees refuse to act, then the court has jurisdiction under s. 30.

"Manorial incidents": see L. P. A., 1922, s. 128 (2); for powers of management during a minority, see S. L. A., 1925, s. 102. Independently of the powers conferred by reference to S. L. A., 1925, trustees for sale would have had power to effect compensation agreements: L. P. A., 1922, s. 138 (5).

Proceeds of sale.

The "proceeds of sale" are made applicable for any of the purposes for which "capital money" can be applied under the S. L. A., 1925, but "land" acquired must be conveyed on trust for sale.

Consents.

Consents required "on a sale": see s. 26, *sup.*, and notes thereto.

Overreaching powers.

For the overreaching powers, see s. 2 and notes thereto; 1st Sch., Pt. IV.; also S. L. A., 1925, s. 72.

(2) Subject to any direction to the contrary in the disposition on trust for sale or in the settlement of the proceeds of sale, the net rents and profits of the land until sale, after keeping down costs of repairs and insurance and other outgoings shall be paid or applied, except so far as any part thereof may be liable to be set aside as capital money under the Settled Land Act, 1925, in like manner as the income of investments representing the purchase money would be payable or

applicable if a sale had been made and the proceeds had been duly invested.

Trusts of rents and profits till sale.

This confirms *Casamajor* v. *Strode*, 1809, 19 Ves. 390, n.; *Hope* v. *D'Hédouville*, 1893, 2 Ch. 361; *Re Searle*, 1900, 2 Ch. 829; *Re Earl of Darnley*, 1907, 1 Ch. 159; *Re Oliver*, 1908, 2 Ch. 74.

Liability to be set aside as capital.

"Liable to be set aside as capital money": see S. L. A., 1925, s. 47 (mining royalties); s. 66 (proceeds of timber). See also *Re Ridge*, 1885, 31 Ch. D. 504 (unopened mines); *cf. Re Daniels*, 1912, 2 Ch. 90. If the trustees are given express power to open mines, then s. 47 has no application: *Re Bagot*, 1894, 1 Ch. 177; but under s. 102 (2) (c) they have only power to continue the working of mines, hence three-fourths of mining rents must be set aside. Under s. 102 (2) (a) they have power to fell timber in the usual course for sale or for repairs or otherwise, but if the infant is impeachable for waste, only on the same terms as he could have felled it, hence as the tenant for life of the proceeds of sale is impeachable, the trustees must set aside three-fourths of the proceeds of timber.

As to capital arising from the sale of a lease or a reversion, see S. L. A., 1925, s. 79.

(3) Where the net proceeds of sale have under the trusts affecting the same become absolutely vested in persons of full age in undivided shares (whether or not such shares may be subject to a derivative trust) the trustees for sale may, with the consent of the persons, if any, of full age, not being annuitants, interested in possession in the net rents and profits of the land until sale:—

(a) partition the land remaining unsold or any part thereof; and

(b) provide (by way of mortgage or otherwise) for the payment of any equality money;

and, upon such partition being arranged, the trustees for sale shall give effect thereto by conveying the land so partitioned in severalty (subject or not to any legal mortgage created for raising equality money) to persons of full age and either absolutely or on trust for sale or, where any part of the land becomes settled land, by a vesting deed, or partly in one way and partly in another in accordance with the rights of the persons interested under the partition, but a purchaser shall not be concerned to see or inquire whether any such consent as aforesaid has been given:

Provided that—

(i) If a share in the net proceeds belongs to a lunatic or defective, the consent of his committee or receiver shall be sufficient to protect the trustees for sale:

(ii) If a share in the net proceeds is affected by an incumbrance the trustees for sale may either give effect thereto or provide for the discharge thereof by means of the property allotted in respect of such share, as they may consider expedient.

Power to partition, what consents required.

The power to partition is exercisable with the consent of the persons of full age entitled in possession, but, under this sub-s. (see "but a purchaser, &c."), the only consent a purchaser is concerned with is that of a person whose consent is, by the disposition, made requisite to the exercise of the trust for sale: s. 26 (1), *sup.*

Under proviso (i) the trustees will obtain the separate consent of the committee or receiver, but no separate consent on behalf of an infant is required: see next sub-s.

Land subject to a derivative trust for sale must not be conveyed to more than four trustees: ss. 3 (1) (b) (ii), 34 (2).

"Legal mortgage": see s. 205 (1) (xvi).

(4) If a share in the net proceeds is absolutely vested in an infant, the trustees for sale may act on his behalf and retain land (to be held on trust for sale) or other property to represent his share, but in other respects the foregoing power shall apply as if the infant had been of full age.

Infant interested in proceeds of sale.

In this case the trust for sale remains in regard to the land appropriated in respect of the infant's share.

If the infant were entitled to a legal estate, the land would become settled land: S. L. A., 1925, s. 26 (1); and the trustees of the settlement would be the statutory owners: *ib.*

(5) This section applies to dispositions on trust for sale coming into operation either before or after the commencement or by virtue of this Act.

Retrospective operation.

Thus the powers will, after 1925, take effect, though the "disposition" (s. 205 (1) (ii), which includes a will) came into operation before 1926. This will facilitate the carrying out of many transactions hitherto unauthorised.

For cases not within the statutory powers an order can be obtained under T. A., 1925, s. 57.

Delegation of powers of management by trustees for sale.

29.—(1) The powers of and incidental to leasing, accepting surrenders of leases and management, conferred on trustees for sale whether by this Act or otherwise, may, until sale of the land, be revocably delegated from time to time, by writing, signed by them, to any person of full age (not being merely an annuitant) for the time being beneficially entitled in possession to the net rents and profits of the land during his life or for any less period: and in favour of a lessee such writing shall, unless the contrary appears, be sufficient evidence

that the person named therein is a person to whom the powers may be delegated, and the production of such writing shall, unless the contrary appears, be sufficient evidence that the delegation has not been revoked.

Interest in proceeds of sale treated as an "equitable interest."

As to a tenant for life of the proceeds of sale being let into possession, see *Re Bagot*, 1894, 1 Ch. 177. An interest in the proceeds of sale of land directed to be sold is treated as an equitable interest in land: s. 205 (1) (x).

"Conferred on trustees for sale . . . by this Act": see last s., by reference to the S. L. A., 1925.

Ss. 28—30 do away with the need for S. L. A., 1884, s. 7, under which the court could allow the tenant of the proceeds of sale to exercise the statutory powers.

If the trustees refuse to delegate the leasing powers and powers to accept surrenders, the tenant for life of the proceeds can apply for an order under the next s.

Protection of lessee dealing with attorney.

The protection given to the lessee by this sub-s. is in addition to that afforded by s. 124, *inf.*; the power should be filed under s. 125.

(2) Any power so delegated shall be exercised only in the names and on behalf of the trustees delegating the power.

Using the names of the trustees for sale.

This is in accordance with the principles laid down in ss. 7 and 8, *sup.*, and is expressly provided for in s. 123 (2), *inf.*

(3) The persons delegating any power under this section shall not, in relation to the exercise or purported exercise of the power, be liable for the acts or defaults of the person to whom the power is delegated, but that person shall, in relation to the exercise of the power by him, be deemed to be in the position and to have the duties and liabilities of a trustee.

Liability of donee of power.

This throws the liability to see that the power is properly exercised on the donee: *cf.* S. L. A., 1925, s. 107.

47 & 48 Vict., c. 18.

(4) Where, at the commencement of this Act, an order made under section seven of the Settled Land Act, 1884, is in force, the person on whom any power is thereby conferred shall, while the order remains in force, exercise such power in the names and on behalf of the trustees for sale in like manner as if the power had been delegated to him under this section.

S. L. A., 1884, s. 7.

Thus a tenant for life of the proceeds of sale who has been given power to exercise the statutory powers is placed in the same position as if the powers had been delegated to him. As to registered land, see L. R. A., 1925, s. 94 (2).

Powers of court where trustees for

30. If the trustees for sale refuse to sell or to exercise any of the powers conferred by either of the last two

sections, or any requisite consent cannot be obtained, any person interested may apply to the court for a vesting or other order for giving effect to the proposed transaction or for an order directing the trustees for sale to give effect thereto, and the court may make such order as it thinks fit.

Trustees for sale refuse to exercise powers.

This s. takes the place of S. L. A., 1884, s. 7, and applies not only to the statutory powers of management given to the trustees, but to a refusal to sell or to delegate the leasing powers.

"Any requisite consent": this applies not only to the consents with which a purchaser is concerned, but to the consents the trustees are required to obtain for their own protection: see ss. 26, 28 (1) (3), *sup.*

If the trustees comply, as far as possible, with the wishes of the beneficiaries pursuant to s. 26 (3), the court would not, it is conceived, interfere, save in special cases.

31.—(1) Where any property, vested in trustees by way of security, becomes, by virtue of the statutes of limitation, or of an order for foreclosure or otherwise, discharged from the right of redemption, it shall be held by them on trust for sale.

Trust for sale of mortgaged property where right of redemption is barred.

This s. replaces C. A., 1911, s. 9.

The words " or otherwise " include a release by deed of the equity of redemption by the mortgagor. The sub-s. confirms the implied trust for sale and gives an express power to postpone the sale. The s. is retrospective: see sub-s. 5 and note thereto.

"Or otherwise."

(2) The net proceeds of sale, after payment of costs and expenses, shall be applied in like manner as the mortgage debt, if received, would have been applicable, and the income of the property until sale shall be applied in like manner as the interest, if received, would have been applicable; but this subsection operates without prejudice to any rule of law relating to the apportionment of capital and income between tenant for life and remainderman.

Semble, there is no rule of law relating to the apportionment of the income of property which has become discharged from the right of redemption by virtue of a foreclosure order: *Re Horn*, 1924, 2 Ch. 222. Hence the tenant for life is entitled to receive the whole of the income of the foreclosed property, though it exceeds the interest on the mortgage debt formerly secured thereon: *S. C.*

Rights of tenant for life.

The leading cases as to apportionment, where a settled fund is properly invested on a security which proves to be insufficient for payment of principal and interest in full, are *Re Godden*, 1893, 1 Ch. 292; *Stewart* v. *Kingsale*, 1902, 1 Ir. R. 496; *Re Atkinson*, 1904, 2 Ch. 160; and see also *Re Broadwood*, 1908, 1 Ch. 115; *Re Coaks*, 1911, 1 Ch. 171; *Re Southwell*, 1915, 113 L. T. 311. As to the correct principle to be applied where the mortgage is unauthorised, see *Re Bird*, 1901, 1 Ch. 916.

Apportionment of capital and income.

Settlement kept off the title.

It is conceived that whether the trustees sell, or convey the property to the beneficiaries *in specie*, if more than one on trust for sale, see ss. 3 (1) (b) (ii), 35 and 36, there will be no need to disclose the trusts of the settlement under which the mortgage money was advanced; even where a trustee has died since the right of redemption became barred, it will be unnecessary, if the death occurred after 1925, to show that no duties are payable, for no land charge would be registered. The trustees could, on a sale, safely convey as "beneficial owners," unless the mortgage had come to them on a transfer made for effectuating an appointment of new trustees, as they would only covenant against their own acts.

Sale as mortgagees.

If the right of redemption had been barred by the Statutes of Limitation the trustees could still sell as mortgagees under their power of sale: *Re Alison*, 1879, 11 Ch. D. 284. A purchaser from the beneficiaries could not go behind a recital in the conveyance to them that they were entitled in equity. The stamp would, of course, be adjudicated. A purchaser dealing with the trustees is not concerned with the equitable title: s. 113.

(3) This section does not affect the right of any person to require that, instead of a sale, the property shall be conveyed to him or in accordance with his directions.

"Instead of a sale."

The s. is retrospective (see sub-s. 5), and there may have been transactions before the commencement of the Act which are substantially equivalent to those alluded to in this sub-s. or sub-s. 4, though such transactions cannot have been strictly "instead of a sale" (sub-s. 3) or "instead of selling" (sub-s. 4), and the mortgage money may not have been capital money for the purposes of the S. L. A. See *Re Bogg*, cited in note to sub-s. 5.

Rights of beneficiaries in land held on trust for sale.

When the trust is wound up the property can be conveyed to the beneficiaries, and see s. 23, *sup.*, as to the continuance of the trust for sale in favour of a purchaser.

Unless all the beneficiaries are *sui juris* and absolutely entitled and concur, the right referred to in this sub-s. cannot be exercised. One of two or more beneficiaries could not before 1926 require an undivided share in the land to be conveyed to him, as this would have prejudiced the sale of the entirety: *Re Horsnaill*, 1909, 1 Ch. 631; nor insisted on a sale of the entirety: *S. C.*; nor on an appropriation to him *in specie*: *Re Kipping*, 1914, 1 Ch. 62. As to conveyances to persons entitled to undivided shares or to joint tenants, see now ss. 34 and 36; and as to partition: s. 28 (3), *sup.*

(4) Where the mortgage money is capital money for the purposes of the Settled Land Act, 1925, the trustees shall, if the tenant for life or statutory owner so requires, instead of selling any land forming the whole or part of such property, execute such subsidiary vesting deed with respect thereto as would have been required if the land had been acquired on a purchase with capital money.

"Instead of a sale."

See note to sub-s. 3 "instead of a sale."

Effect of settling land.

It is conceived that if the tenant for life requires the land to be settled, no apportionment of capital and income between tenant for life and remainderman can afterwards be made.

Not applicable to trust for sale.

This sub-s. does not apply where the land is held on trust for sale, and see s. 25 (4).

(5) This section applies whether the right of redemption was discharged before or after the first day of January, nineteen hundred and twelve, but has effect without prejudice to any dealings or arrangements made before that date.

This s. does not apply where the foreclosed land has, before 1912, been definitely adopted as real estate and settled as such: *Re Bogg,* 1917, 2 Ch. 239.

32.—(1) Where a settlement of personal property or of land held upon trust for sale contains a power to invest money in the purchase of land, such land shall, unless the settlement otherwise provides, be held by the trustees on trust for sale; and the net rents and profits until sale, after keeping down costs of repairs and insurance and other outgoings, shall be paid or applied in like manner as the income of investments representing the purchase-money would be payable or applicable if a sale had been made and the proceeds had been duly invested in personal estate.

Implied trust for sale in personalty settlements.

This s. replaces C. A., 1911, s. 10. See now s. 28 (1), *sup.*

The object of the s.

The object of the s. is to avoid the inconveniences resulting from a personalty settlement, or will authorising the purchase of land or freehold ground rents without directing them to be held on trust for sale, and to supply the usual trust of the rents until sale. Incidentally it has, in some cases, altered the practice of having a separate clause authorising the purchase of land.

The need for a trust and not a mere power of sale.

If before 1912 land was included in an ordinary investment clause, the usual power to vary investments gave a power of sale: *Re Gent & Eason,* 1905, 1 Ch. 386; and generally a power to invest implied a power to vary investments, including an investment in land: *Re Pope,* 1911, 2 Ch. 442; but a trust for sale was required in order to reconvert the purchased land, if freehold, so that it might devolve as personalty with the rest of the settled funds. Otherwise, if a beneficiary who had attained a vested interest died while the land still remained unconverted, an apportionment had to be made of his share as between his heir-at-law and next of kin. After 1925 a trust to retain or sell will be construed as a trust for sale: s. 25 (4), *sup.;* and on a death intestate after 1925 real and personal estate will devolve together: Ad. of E. A., 1925, s. 46, subject to the exception in s. 51 (2).

Trust to retain or sell.

"Unless . . otherwise provides."

This sub-s., which, however, only applies to settlements coming into operation after 1911, enacts that, unless the settlement otherwise provides, land purchased under a power to invest in land contained in a personalty settlement, shall be held upon trust for sale, and therefore devolve as personalty. It is conceived that the expression "unless . . . provides" means that the sub-s. will have effect in every case in which it is not excluded either expressly or by necessary implication. Thus, if the settlement directed that the land when purchased should be held in trust for A. for life with remainder for B. in fee, it would no doubt "otherwise provide." But a power of sale would not, it is conceived, exclude the sub-s. Indeed, a power of sale, in relation to land, is useless except to constitute S. L. A. trustees: see S. L. A., 1925, ss. 30 (1), 108, 109. It may be advisable, however, where the purchase of land is included in an investment clause, expressly to refer to this s.

Powers of management until sale.

For powers of management until sale and to invest in land, see s. 28, *sup.*

(2) This section applies to settlements (including wills) coming into operation after the thirty-first day of December, nineteen hundred and eleven, and does not apply to capital money arising under the Settled Land Act, 1925, or money liable to be treated as such.

"Capital money."

"Liable to be treated as such": see S. L. A., 1925, s. 81.

Application of Pt. I. to personal representatives.

33. The provisions of this Part of this Act relating to trustees for sale apply to personal representatives holding on trust for sale, but without prejudice to their rights and powers for purposes of administration.

"Holding on trust for sale": see, *e.g.*, Ad. of E. A., 1925, s. 33. As to their rights and powers for purposes of administration, see Parts III. and IV. of that Act. They are by s. 39, *ib.*, given the powers of trustees for sale.

Undivided Shares and Joint Ownership.

Effect of future dispositions to tenants in common.

34.—(1) An undivided share in land shall not be capable of being created except as provided by the Settled Land Act, 1925, or as hereinafter mentioned.

"As provided by the S. L. A., 1925": see, *ib.*, s. 36 (4), namely, under a trust instrument, and then only behind a trust for sale.

"As hereinafter mentioned": see the next three sub-ss. as to dealings purporting to create undivided shares.

Legal estates.

A legal estate is not capable of subsisting or of being created in an undivided share: s. 1 (6), *sup.*; but legal easements can be exercised in common by the owner of each dominant tenement: s. 187 (2). For an example of this, see 1st Sch., Pt. V. (party structures).

Existing undivided shares.

As to undivided shares subsisting on 1st January, 1926, see 1st Sch., Pt. IV., which subjects the entirety of the land to a trust for sale.

(2) Where, after the commencement of this Act, land is expressed to be conveyed to any persons in undivided shares and those persons are of full age, the conveyance shall (notwithstanding anything to the contrary in this Act) operate as if the land had been expressed to be conveyed to the grantees, or, if there are more than four grantees, to the four first named in the conveyance, as joint tenants upon the statutory trusts hereinafter mentioned and so as to give effect to the rights of the persons who would have been entitled to the shares had the conveyance operated to create those shares:

Provided that, where the conveyance is made by way of mortgage the land shall vest in the grantees or such four of them as aforesaid for a term of years absolute (as provided by this Act) as joint tenants subject to cesser on redemption in like manner as if the mortgage

money had belonged to them on a joint account, but without prejudice to the beneficial interests in the mortgage money and interest.

Purported conveyances in undivided shares.

See also s. 3 (1) (b) (ii), which contains a like restriction as to the number of trustees for sale.

"And those persons are of full age": see s. 1 (6); a legal estate cannot be held by an infant; also ss. 19, 20, and 1st Sch., Pt. III.

For the "statutory trusts," see next s.

Mortgage terms.

As to creation of mortgage terms, see ss. 85, 86; and as to advances on a joint account: ss. 111 and 113. As to mortgages subsisting before 1926, see 1st Sch., Pt. II., paras. 6 (a), 7 (a) (b) (h); and Pts. VII. and VIII.

(3) A devise bequest or testamentary appointment, coming into operation after the commencement of this Act, of land to two or more persons in undivided shares shall operate as a devise bequest or appointment of the land to the trustees (if any) of the will for the purposes of the Settled Land Act, 1925, or, if there are no such trustees, then to the personal representatives of the testator, and in each case (but without prejudice to the rights and powers of the personal representatives for purposes of administration) upon the statutory trusts hereinafter mentioned.

Testamentary dispositions in undivided shares.

A will only operates in equity: L. P. (Amend.) A., 1924, 9th Sch., para. 3: legal estates vest in the personal representatives: Ad. of E. A., 1925, s. 1; and as to land settled previously to the death of the tenant for life: *ib.*, ss. 10, 22—24.

If S. L. A. trustees are not appointed by the will, then the personal representatives will be such trustees: S. L. A., 1925, s. 30 (3).

(4) Any disposition purporting to make a settlement of an undivided share in land shall only operate as a settlement of a corresponding share of the net proceeds of sale and of the rents and profits until sale of the entirety of the land.

Settlement of an undivided share.

Thus a settlement of an undivided share becomes impossible, for the entirety will be held on trust for sale.

Either the estate owner will become a trustee for sale, or the grantees of the land or four of them will become trustees for sale. As to contracts to settle land, see S. L. A., 1925, s. 11.

Meaning of the statutory trusts.

35. For the purposes of this Act land held upon the "statutory trusts" shall be held upon the trusts and subject to the provisions following, namely, upon trust to sell the same and to stand possessed of the net proceeds of sale, after payment of costs, and of the net rents and profits until sale after payment of rates, taxes,

costs of insurance, repairs, and other outgoings, upon such trusts, and subject to such powers and provisions, as may be requisite for giving effect to the rights of the persons (including an incumbrancer of a former undivided share or whose incumbrance is not secured by a legal mortgage) interested in the land.

"Statutory trusts."

These trusts are referred to in ss. 34, 36, and 1st Sch., Pts. IV. and V. The words in brackets have special reference to 1st Sch., Pt. IV., as incumbrancers of these classes have to be satisfied with charges on the proceeds of sale. For the powers of a former mortgagee of an undivided share, see s. 102, *inf.*

Mortgagees of undivided shares.

Joint tenancies.

36.—(1) Where a legal estate (not being settled land) is beneficially limited to or held in trust for any persons as joint tenants, the same shall be held on trust for sale, in like manner as if the persons beneficially entitled were tenants in common, but not so as to sever their joint tenancy in equity.

Implied trusts for sale.

Thus unless the land is settled, joint tenants of legal estates held beneficially will always be trustees for sale. This will include partners, who can no longer hold land as tenants in common.

If the land is settled land there must be a vesting instrument, hence there will be no difficulty in practice in deciding whether title has to be made under the S. L. A., 1925, or under a trust for sale.

"As if the persons beneficially entitled were tenants in common": this brings s. 34 into play. There is an implied power to postpone the sale: s. 25. The beneficial interests attach to the proceeds of sale and remain unaffected: s. 3, *sup.*

Tenancies by entireties.

Tenancies by entireties are brought within this s. by 1st Sch., Pt. VI.

(2) No severance of a joint tenancy of a legal estate, so as to create a tenancy in common in land, shall be permissible, whether by operation of law or otherwise, but this subsection does not affect the right of a joint tenant to release his interest to the other joint tenants, or the right to sever a joint tenancy in an equitable interest whether or not the legal estate is vested in the joint tenants:

Provided that, where a legal estate (not being settled land) is vested in joint tenants beneficially, and any tenant desires to sever the joint tenancy in equity, he shall give to the other joint tenants a notice in writing of such desire or do such other acts or things as would, in the case of personal estate, have been effectual to sever the tenancy in equity, and thereupon under the trust for sale affecting the land the net proceeds of sale, and the net rents and profits until sale, shall be held upon the

trusts which would have been requisite for giving effect to the beneficial interests if there had been an actual severance.

No severance of joint tenancies.

The s. preserves the right of a legal joint tenant to release to his co-tenants. Where the joint tenancy in an equitable interest is severed, the latter will generally be represented by an interest in the proceeds of sale: see definition of "equitable interest," s. 205 (1) (x).

Interest in remainder.

There is, however, no objection to an interest in remainder being held in undivided shares, for when it falls into possession the shares will take effect behind a trust for sale: 1st Sch., Pt. IV., para. 2; S. L. A., 1925, s. 36.

Severance by notice, &c.

As to notice, see s. 196, *inf.* And as to severing a joint tenancy, *e.g.*, by one tenant acquiring the reversion: *Wiscot's Case*, 1599, 2 Co. Rep. 60 b; Co. Litt. 182 b; by a grant (not a surrender) by a tenant for life to a joint tenant in remainder: Co. Litt. 182 b, 183 a; by mutual agreement: *Frewen* v. *Relfe*, 1787, 2 Bro. C. C. 220; *Re Wilford*, 1879, 11 Ch. D. 267; or by conduct: *Williams* v. *Hensman*, 1861, 1 John & H. 546; *Palmer* v. *Rich*, 1897, 1 Ch. 134.

(3) Without prejudice to the right of a joint tenant to release his interest to the other joint tenants no severance of a mortgage term or trust estate, so as to create a tenancy in common, shall be permissible.

Joint tenancies in mortgage terms and trust estates.

Under this sub-s. it becomes impossible to sever a joint tenancy in a mortgage term or trust estate so as to create a tenancy in common; thus neither trustees for sale (whether under an express or implied trust) nor tenants for life, who now become trustees of settled land, can sever their joint tenancy in the legal estate.

Position of tenants for life who sever.

If persons holding as joint tenants for life only sever their equitable interest, this is immaterial. Under S. L. A., 1925, s. 36, they will hold on trust for sale and will be bound to convey the settled land to the trustees of the settlement only where the land itself would be held in undivided shares. An arrangement for sharing the rents and profits does not affect the joint trust estate vested in them.

Rights of husband and wife.

37. A husband and wife shall, for all purposes of acquisition of any interest in property, under a disposition made or coming into operation after the commencement of this Act, be treated as two persons.

Gifts to husband, wife and third party.

A limitation of real or personal property to or in trust for a husband, wife and a third party after 1882, the husband and wife, in the absence of an expression of a contrary intention, only took a moiety, the third person taking the other moiety: *Re Jupp*, 1888, 39 Ch. D. 148; *Re March*, 1884, 27 Ch. D. 166; and see *Re Dixon*, 1889, 42 Ch. D. 306. After 1925 the husband, wife and third party, under this s., will each have equal rights.

As to tenancies by entireties, see 1st Sch., Pt. VI., and note thereto.

Party structures.

38.—(1) Where under a disposition or other arrangement which, if a holding in undivided shares had been permissible, would have created a tenancy in common, a wall or other structure is or is expressed to be made a party wall or structure, that structure shall be and remain severed vertically as between the respective owners, and the owner of each part shall have such rights

to support and user over the rest of the structure as may be requisite for conferring rights corresponding to those which would have subsisted if a valid tenancy in common had been created.

Easements in common.

This s. applies to dispositions made after 1925; as to existing party structures, see 1st Sch., Pt. V. A legal easement can be held in common: s. 187 (2), *i.e.*, distinct easements may affect the same servient tenement; an easement is not held in undivided shares.

(2) Any person interested may, in case of dispute, apply to the court for an order declaring the rights and interests under this section of the persons interested in any such party structure, and the court may make such order as it thinks fit.

The court in relation to party structures.

See also ss. 203, 204, and 1st Sch., Pt. V., para. 3, as to the jurisdiction of the court.

Transitional Provisions.

Transitional provisions in First Schedule. 12 & 13 Geo. 5, c. 16.

39. For the purpose of effecting the transition from the law existing prior to the commencement of the Law of Property Act, 1922, to the law enacted by that Act (as amended), the provisions set out in the First Schedule to this Act shall have effect—

(1) for converting existing legal estates, interests and charges not capable under the said Act of taking effect as legal interests into equitable interests;

(2) for discharging, getting in or vesting outstanding legal estates;

(3) for making provision with respect to legal estates vested in infants;

(4) for subjecting land held in undivided shares to trusts for sale;

(5) for dealing with party structures and open spaces held in common;

(6) for converting tenancies by entireties into joint tenancies;

(7) for converting existing freehold mortgages into mortgages by demise;

(8) for converting existing leasehold mortgages into mortgages by sub-demise.

Importance of provisions in 1st Sch.

After thirty years and upwards the provisions in the 1st Sch. will cease to affect titles; in the meantime they are of the greatest importance in connexion with the introduction of the new practice.

Part II.

Contracts, Conveyances and other Instruments.

Contracts.

Contracts for sale, &c. of land to be in writing.

40.—(1) No action may be brought upon any contract for the sale or other disposition of land or any interest in land, unless the agreement upon which such action is brought, or some memorandum or note thereof, is in writing, and signed by the party to be charged or by some other person thereunto by him lawfully authorised.

Statute of Frauds, s. 4 (part), reproduced.

This sub-s. replaces part of s. 4 of the Statute of Frauds, which referred to "any contract or sale of lands, tenements or hereditaments, or any interest in or concerning them," and gives effect to the construction placed on those words.

"Disposition."

"Disposition" includes a mortgage, charge, lease, assent, vesting declaration, vesting instrument, disclaimer, release, and every other assurance: s. 205 (1) (ii). See Dart, 7th ed., 219; *Horsey* v. *Graham*, 1869, L. R. 5 C. P. 9 (brokers' agreement to obtain a lease).

"Interest in land."

"Interest in land" includes an undivided share in land (a contract as to which would be construed as a contract to convey a corresponding share in the proceeds: s. 42 (6)) or charge upon land: Dart, 7th ed., 219; *Driver* v. *Broad*, 1893, 1 Q. B. 744 (debentures). As to sale of growing crops, &c., see 1 Hals. L. of E., 293; Dart, 7th ed., 226.

Agreement, parties *ad idem*.

There must be a *consensus ad idem* between the parties; a signed instrument is not made evidence of a valid contract, unless the parties were in fact agreed: *Hussey* v. *Horne-Payne*, 1879, 4 A. C. 311 (negotiations reopened); *Van Praagh* v. *Everidge*, 1903, 1 Ch. 434. As to a memorandum expressed to be "subject to a proper contract," or subject to like conditions, see *Chillingworth* v. *Esche*, 1924, 1 Ch. 97, and cases there cited; *Lockett* v. *Norman-Wright*, 1925, 1 Ch. 56.

"Memorandum or note."

The memorandum or note need not be made at the time of agreement, but may be made afterwards: *Barkworth* v. *Young*, 1856, 4 Drew. 1; 7 Hals. L. of E., 367; but (subject to the rules of pleading) must be in existence when the action is commenced: *Lucas* v. *Dixon*, 1889, 22 Q. B. D. 357 (defendant's affidavit in the action insufficient); but compare *Grindell* v. *Bass*, 1920, 2 Ch. 487 (agreement in pleadings). As to connected documents forming a memorandum, see *Last* v. *Hucklesby*, 1914, W. N. 157 (letter and envelope); *Stokes* v. *Whicher*, 1920, 1 Ch. 411 (carbon copy); 7 Hals. L. of E., 369.

Contents of memorandum.

The memorandum must contain all the essential terms of the contract, and must show that the parties have agreed to those terms: 7 Hals. L. of E., 372; as to contracts by correspondence: s. 46, *inf.*, and Form No. 1 in Appendix No. III.

Description of parties.

The parties must be so described that their identity cannot be fairly disputed: *Potter* v. *Duffield*, 1874, L. R. 18 Eq. 4 ("vendor" insufficient); *Pattle* v. *Anstruther*, 1893, 69 L. T. 175 ("proposing lender" insufficient); *Lovesy* v. *Palmer*, 1916, 2 Ch. 233 ("client" insufficient); *Rossiter* v. *Miller*, 1878, 3 A. C. 1124 ("proprietors" sufficient); *Catling* v. *King*, 1877, 5 Ch. D. 660 ("trustee . . . for sale" sufficient); 7 Hals. L. of E., 370.

Authorised agents.

An unnamed principal, not himself sufficiently described, cannot be sued on a memorandum signed by his agent, except in cases where by the memorandum

the agent is himself liable on the contract: *Lovesy* v. *Palmer, sup.*, criticising *Filby* v. *Hounsell*, 1896, 2 Ch. 737. The description may be inferred from the other terms of the memorandum, or from parol evidence necessarily admitted explaining those terms: *Carr* v. *Lynch*, 1900, 1 Ch. 613 ("you having paid 50*l.*" and "further lease" sufficient to identify lessee); or from some document, previously existing, which is sufficiently connected with the memorandum by clear reference: *Williams* v. *Jordan*, 1877, 6 Ch. D. 517, 520.

Description of property. The property intended to be dealt with must also be sufficiently described so as to identify it, parol evidence is admissible to explain the memorandum: *Ogilvie* v. *Foljambe*, 1817, 3 Mer. 53 ("Mr. O.'s house"); *Cowley* v. *Watts*, 1854, 17 Jur. 172 ("my house"); *Wood* v. *Scarth*, 1855, 2 K. & J. 33 ("intended new public-house at P."); *Shardlow* v. *Cotterell*, 1881, 20 Ch. D. 90 ("property purchased at 420*l.* at S. Inn, P., on above date); *Plant* v. *Bourne*, 1897, 2 Ch. 281 ("twenty-four acres at T."); *Auerbach* v. *Nelson*, 1919, 2 Ch. 383 ("house being sold for 500*l.* from N."); see *Vale of Neath Colliery Co.* v. *Furness*, 1876, 45 L. J. Ch. 276 ("property" insufficient).

Price. The memorandum must state the price fixed, if any, or must enable the price to be clearly inferred: *Hawes* v. *Armstrong*, 1835, 1 Scott. 661, 668. If the price is to be ascertained, *e.g.*, by valuation, this must be stated: *Milnes* v. *Gery*, 1807, 14 Ves. 400, 407. If the method specified for ascertaining the price cannot be followed, *e.g.*, where the agreed valuer dies, the court cannot, in the absence of special circumstances, ascertain the price in any other manner: *Milnes* v. *Gery, sup.*; *Wilks* v. *Davis*, 1817, 3 Mer. 507 (arbitration bond not signed); *Morgan* v. *Milman*, 1853, 3 De G. M. & G. 24, 37; *Vickers* v. *Vickers*, 1867, L. R. 4 Eq. 529; *Firth* v. *Midland Rly. Co.*, 1875, L. R. 20 Eq. 100.

Commencement and other terms of lease. If the agreement is for a lease, the memorandum must identify first the date of commencement: *Marshall* v. *Berridge*, 1882, 19 Ch. D. 233; *Edwards* v. *Jones*, 1921, 124 L. T. 740; *Re Lauder & Bagley*, 1892, 3 Ch. 41 (inferred to be date when possession was given), secondly its duration, and thirdly the rent to be reserved: *Fitzmaurice* v. *Bayley*, 1860, 9 H. L. C. 78; 18 Hals. L. of E., p. 374.

Omission of a term. *Semble*, if a stipulation solely benefiting one of the parties is omitted from the memorandum, that party, as plaintiff in an action on the contract, may waive the stipulation and obtain specific performance of the contract without such stipulation: *North* v. *Loomes*, 1919, 1 Ch. 378; see *Allsopp* v. *Orchard*, 1923, 1 Ch. 323; *Morrell* v. *Studd*, 1913, 2 Ch. 648.

"Writing." "Writing" includes printing, lithography, photography, and other modes of representing or reproducing words in a visible form: Interp. A., 1889, s. 20.

Signature. As to what signature is sufficient, see 7 Hals. L. of E., 375 *et seq.*; *Lord Cloncurry* v. *Laffan*, 1924, 1 I. R. 78.

Agent's authority. The agent under this s. need not be authorised in writing: *Waller* v. *Hendon*, 1723, 2 Eq. Cas. Abr. 50; *Mortlock* v. *Buller*, 1804, 10 Ves. 292; *Heard* v. *Pilley*, 1869, 4 Ch. 548; 7 Hals. L. of E., 378. A general authority to an agent to find a purchaser does not alone authorise the agent to sign a memorandum of a contract binding on the vendor: *Hamer* v. *Sharp*, 1874, L. R. 19 Eq. 108; *Thuman* v. *Best*, 1907, 97 L. T. 239; *Lewcock* v. *Bromley*, 1920, W. N. 346. If the agent has authority to sign the particular memorandum, the fact that he was not authorised to bind his principal by a contract is immaterial: *Daniels* v. *Trefusis*, 1914, 1 Ch. 788, 798; *North* v. *Loomes*, 1919, 1 Ch. 378; *Grindell* v. *Bass*, 1920, 2 Ch. 487. As to powers for counsel or solicitor to bind client by pleading or letter: *Daniels* v. *Trefusis*, 1914, 1 Ch. 788 (solicitor's letter); *Thirkell* v. *Cambi*, 1919, 2 K. B. 590 (instruction to deny contract); *Grindell* v. *Bass*, 1920, 2 Ch. 487 (counsel's pleading); *Horner* v. *Walker*, 1923, 2 Ch. 218 (letter with draft); *Cloncurry* v. *Laffan*, 1924, 1 Ir. R. 78 (general instructions).

Auctioneer's authority. An auctioneer has authority, at the time of the auction or substantially at that time (subject to the conditions of sale: *McManus* v. *Fortescue*, 1907, 2 K. B. 1, where the reserve was not reached), to sign a memorandum on behalf of both vendor and purchaser: *Emmerson* v. *Heelis*, 1809, 2 Taunt. 38; *White* v. *Proctor*, 1811, 4 Taunt. 209; *Kemeys* v. *Proctor*, 1820, 1 Jac. & W. 350; *McMeekin* v. *Stevenson*, 1917, 1 Ir. R. 348. This authority does not extend

to signing a memorandum on a subsequent occasion, or at a private sale: *Bell* v. *Balls*, 1897, 1 Ch. 663.

An auctioneer's clerk has no such authority except in special circumstances: *Bird* v. *Boulter*, 1833, 4 B. & Ad. 443; *Peirce* v. *Corf*, 1874, L. R. 9 Q. B. 210; *Bell* v. *Balls, sup.*; *Sims* v. *Landray*, 1894, 2 Ch. 318 (as to cases where the purchaser by words or signs conferred authority). Auctioneer's clerk's authority.

A defendant relying on this s. must raise the defence by his pleading: a bare denial of a contract is construed only as a denial in fact of the contract alleged, or of the facts from which the same may be implied by law, and not of the sufficiency thereof under this s.: R. S. C., Ord. 19. rr. 15, 19. As to what is sufficient pleading, see *North* v. *Loomes*, 1919, 1 Ch. 378. The rule as to pleading takes effect under the Jud. A., 1925, s. 98 (2) (b). See generally on this s. 1 Prid., 22nd ed., Ch. IV. Pleading.

(2) This section applies to contracts whether made before or after the commencement of this Act and does not affect the law relating to part performance, or sales by the court.

This sub-s. is declaratory; as to part performance by acts, unequivocally referable to the contract, being sufficient to take the contract out of this s., see *Maddison* v. *Alderson*, 1883, 8 A. C. 467; Fry, Specific Performance, 6th ed., Pt. III., Ch. XI.; 27 Hals. L. of E., 31; 1 Prid., 22nd ed., Ch. IV. Part performance.

The act must constitute such a part performance as to change the relative positions of the parties: *Maddison* v. *Alderson, sup.*, at p. 478. Payment of money is an equivocal act; generally it is not a sufficient act of part performance: *S. C.*; *Thursby* v. *Eccles*, 1900, 49 W. R. 281; *Chaproniere* v. *Lambert*, 1917, 2 Ch. 356. The following, however, are examples of acts which are generally sufficient—taking possession: *Morphett* v. *Jones*, 1818, 1 Swans. 172; *Brough* v. *Nettleton*, 1921, 2 Ch. 25; giving notice to quit to tenants at the request of the purchaser: *Daniels* v. *Trefusis*, 1914, 1 Ch. 788; making alterations or decorations at the request of the purchaser: *Dickinson* v. *Barrow*, 1904, 2 Ch. 339; *Rawlinson* v. *Ames*, 1925, 1 Ch. 96.

As to sales by the Court: Dart, 7th ed., 218, 1165; 27 Hals. L. of E., 30; the purchaser signs the bidding paper without any other memorandum of the contract, which becomes binding under an order of the master. For "court," see s. 203 (3) (4). Sales by court.

41. Stipulations in a contract, as to time or otherwise, which according to rules of equity, are not deemed to be or to have become of the essence of the contract, are also construed and have effect at law in accordance with the same rules. Stipulations not of the essence of a contract.

This s. replaces s. 25 (7) of the Jud. A., 1873.

At law time was of the essence of a contract, but in equity only where necessarily implied or expressly stipulated: *Tilley* v. *Thomas*, 1867, 3 Ch. 61. The equity rule applies to land but not to mercantile contracts: *Reuter* v. *Sala*, 1879, 4 C. P. D. 239, 249; *Sharp* v. *Christmas*, 1892, 8 T. L. R. 687. General rule.

For cases on this doctrine, see *Newman* v. *Rogers*, 1793, 4 Bro. C. C. 391 (reversion); *MacBryde* v. *Weekes*, 1856, 22 Beav. 533 (working mines); *Cowles* v. *Gale*, 1871, 7 Ch. D. 12 (public-house); *Nicholson* v. *Smith*, 1882, 22 Ch. D. 640 (renewal of lease); 27 Hals. L. of E., 67. Time impliedly of the essence.

Notice limiting a reasonable time.

Where time is not originally of the essence of the contract, if a notice is served limiting a reasonable time within which the obligation must be performed, the time so fixed becomes of the essence of the contract: *Stickney* v. *Keeble*, 1915, A. C. 386; 27 Hals. L. of E., 68.

This s. applies in actions for specific performance of contracts or for damages under contracts where the court could have granted specific performance.

Provisions as to contracts.

42.—(1) A stipulation that a purchaser of a legal estate in land shall accept a title made with the concurrence of any person entitled to an equitable interest shall be void, if a title can be made discharged from the equitable interest without such concurrence—

(a) under a trust for sale; or

(b) under this Act, or the Settled Land Act, 1925, or any other statute.

"Purchaser."

"Purchaser" in this s. means a purchaser for money or money's worth (sub-s. 9) and includes an intending lessee, mortgagee, or a person intending to effect an exchange or otherwise acquire a legal estate for money's worth: s. 205 (1) (xxi). If the owner of the equitable interest is willing to concur, the vendor must obtain a separate release before completion to avoid a reference to the equity in the conveyance of the legal estate.

Title to be made without bringing on equitable interests.

The object of the sub-s. is to enable a purchaser to insist on the best title being given to him and by the best method; the contract cannot be rescinded if he insists on his rights: sub-s. (8). Trustees for sale have wide overreaching powers, see ss. 2, 27, 28 (incorporating the statutory powers of a tenant for life), so have tenants for life: S. L. A., 1925, ss. 21 and 72; also personal representatives: Ad. of E. A., 1925, ss. 36, 39; also legal mortgagees: ss. 88, 89. 104, *inf.* These powers must be exercised to the full extent before resort is had to joining a person entitled to an equitable interest. Thus as a rule recitals will be confined to dealings affecting legal estates. For examples as to the manner of making title, see notes to next sub-s. There may be a few exceptions where it is necessary to join the persons entitled to equitable interests, for instance where a trustee for sale buys from the persons interested in the proceeds of sale, for he and his co-trustees cannot make a title without their concurrence: s. 72 (4).

Interests protected by registration.

For the right to obtain a title free from interests protected by registration under L. C. A., 1925, see s. 43, *inf.*

(2) A stipulation that a purchaser of a legal estate in land shall pay or contribute towards the costs of or incidental to—

(a) obtaining a vesting order, or the appointment of trustees of a settlement, or the appointment of trustees of a conveyance on trust for sale; or

(b) the preparation stamping or execution of a conveyance on trust for sale, or of a vesting instrument for bringing into force the provisions of the Settled Land Act, 1925;

shall be void.

Costs of vesting order, appointment of S. L. A.

Thus if a vesting order has to be obtained under ss. 3 (5), 9, 30 (trustees for sale refusing to convey), 50 (2) (discharge of incumbrances), 90, 91 (realisation of mortgages); S. L. A., 1925, s. 12 (settled land); Ad. of E. A., 1925.

s. 43 (2) (as respects personal representatives); or under T. A., 1925, ss. 44—56 (vesting orders generally), the purchaser is freed from the costs. trustees or of trustees for sale.

If the land is settled, title to a legal estate cannot be made unless there are S. L. A. trustees (save in the case of short leases within S. L. A., 1925, s. 42 (5), also where no capital money arises: s. 110 (4)) and a vesting instrument has been executed: *ib.*, s. 13. Thus if a purchaser before 1926 has acquired land subject to but indemnified against family charges (*e.g.*, a jointure), he is a tenant for life: *ib.*, s. 20 (1) (ix); there is, *semble*, a compound settlement consisting of the instrument creating the family charge and the conveyance: *ib.*, ss. 1 (1) (v), 2, 3, 117 (1) (xxiv); the land is settled land: *ib.*, s. 2; for it has become subject to a settlement; hence, unless he can obtain a release of the family charge, he and the jointress or the portioners must appoint S. L. A. trustees under s. 30 (1) (v), unless there are already trustees in existence: ss. 31, 33; or an order must be obtained under s. 34; and the trustees so appointed must execute a vesting instrument: *ib.*, 1st Sch., Form No. 1; 2nd Sch., para. 1. Under the above sub-s. this must be done free of cost to the purchaser. If the family charges are released, the absolute owner is no longer a tenant for life within s. 13. After the vesting deed is executed any legal term for raising portions becomes an equitable term: *ib.*, 2nd Sch., para. 1 (6). Land affected by, but indemnified against, family charges.

Under this s. an intending purchaser can insist on the vendor creating a trust for sale under s. 2 (2), *sup.*, or a settlement under S. L. A., 1925, s. 21, for overreaching equitable interests or powers, not being family charges within s. 1 (1) (v), where the land is not already subject to a trust for sale or a settlement. Special methods of overreaching equitable interests and powers.

A purchaser, where there are no S. L. A. trustees or only one, not being a trust corporation: S. L. A., 1925, s. 94; or where there are less than two individual trustees for sale: s. 27, *sup.*, should insist on the appointment of new trustees. Appointment of new trustees.

Certain equitable interests cannot be overreached: L. P. A., 1925, s. 2 (3); S. L. A., 1925, s. 72 (2); these, as well as legal estates, a vendor will sell subject to, unless, being money charges, they are to be cleared under ss. 50 or 191.

(3) A stipulation contained in any contract for the sale or exchange of land made after the commencement of this Act, to the effect that an outstanding legal estate is to be traced or got in by or at the expense of a purchaser or that no objection is to be taken on account of an outstanding legal estate, shall be void.

For the vesting of legal estates on 1st January, 1926, in the proper persons, see 1st Sch., Pt. II., *inf.*; also L. P. A., 1922, 12th Sch., *sup.*; S. L. A., 1925, 2nd Sch., para. 1 (6).

For contracts deemed to extend to the legal estate, see the next sub-s.

As legal estates are made the basis of conveyancing, this sub-s. became necessary; a condition that a legal estate should be left outstanding would have meant that the vendor had a bad title. It does not mean that the vendor cannot sell subject to a legal term, a legal mortgage, a legal rentcharge or a legal easement. Outstanding legal estates.

(4) If the subject matter of any contract for the sale or exchange of land—

(i) is a mortgage term and the vendor has power to convey the fee simple in the land, or, in the case of a mortgage of a term of years absolute, the leasehold reversion affected by the mortgage, the contract shall be deemed to extend to the fee simple in the land or such leasehold reversion;

(ii) is an equitable interest capable of subsisting as a

legal estate, and the vendor has power to vest such legal estate in himself or in the purchaser or to require the same to be so vested, the contract shall be deemed to extend to such legal estate;

(iii) is an entailed interest in possession and the vendor has power to vest in himself or in the purchaser the fee simple in the land (or, if the entailed interest is an interest in a term of years absolute, such term), or to require the same to be so vested, the contract shall be deemed to extend to the fee simple in the land or the term of years absolute.

Mortgage terms and legal charges.

A mortgagee of an estate in fee simple, by demise made before or after 1925, who sells under his statutory or express power, may convey the fee simple: s. 88.

A mortgagee of a term of years absolute, by sub-demise made after 1925, who sells under his statutory or express power, may convey the leasehold reversion: s. 89; but that s. does not authorise the leasehold reversion to be conveyed where the mortgage only affects part of the land demised and the rent has not been apportioned. Chargees by way of legal mortgage (s. 87) have the powers conferred by ss. 88 and 89; with the leave of the court a leasehold reversion may be excepted out of the sale: s. 89 (1) (a).

Equitable interest capable of subsisting as a legal estate.

As to clothing an equitable interest with a legal estate: ss. 3, 9, 66, 90, 91, 126—8, 152, 181; S. L. A., 1925, ss. 6—10, 12, 16. For definition of "equitable interest capable of subsisting as a legal estate": s. 205 (1) (x), *inf.* As to a person vesting a legal estate in himself: ss. 88 (3), 89 (3) (mortgagee acquiring title under Limitation Acts), 153 (enlargement of long terms).

Tenant in tail in possession.

A tenant in tail in possession can make a title to the fee simple or term settled (S. L. A., 1925, s. 20 (1) (i)), independently of barring the entail under the F. & R. A., 1833. As to Parliamentary entails: S. L. A., 1925, s. 23 (2).

(5) This section does not affect the right of a mortgagee of leasehold land to sell his mortgage term only if he is unable to convey or vest the leasehold reversion expectant thereon.

Sale of mortgage term only.

See s. 89 (1) (a), (b); also s. 101 (power of sale) and ss. 126, 128 (irrevocable powers of attorney).

(6) Any contract to convey an undivided share in land made before or after the commencement of this Act, shall be deemed to be sufficiently complied with by the conveyance of a corresponding share in the proceeds of sale of the land in like manner as if the contract had been to convey that corresponding share.

Contracts to convey undivided shares.

Undivided shares in land take effect behind a statutory trust for sale: ss. 34, 35; Part IV. of 1st Sch.; and S. L. A., 1925, s. 36.

As to a disposition purporting to settle an undivided share: s. 34 (4). *sup.*

As to mortgages of undivided shares: s. 102; 1st Sch., Pt. IV., *inf.*

(7) Where a purchaser has power to acquire land compulsorily, and a contract, whether by virtue of a

notice to treat or otherwise, is subsisting under which title can be made without payment of the compensation money into court, title shall be made in that way unless the purchaser, to avoid expense or delay or for any special reason, considers it expedient that the money should be paid into court.

Title on compulsory purchase without payment into court.

The object of this sub-s. is to negative the rule that, on a purchase from persons under disability, the promoters could not insist on the sale being carried out under any power, other than that contained in the L. Clauses As., which involved payment of the compensation money into court under the L. Clauses A., 1845, ss. 69, 71: *Re Pigott & G. W. R. Co.*, 1881, 18 Ch. D. 146; *Re Bentinck & L. & N. W. R.*, 1895, 12 T. L. R. 100; *Re Leeds Grammar School*, 1901, 1 Ch. 228. The promoters will now be able to insist on the sale being carried out by tenants for life, trustees for sale, &c., and under other powers, *e.g.*, under S. L. A., 1925, ss. 25 (married woman restrained from anticipation), 26 (infants), 28 (lunatic), 29 (charity). The L. Clauses As. take effect as if references therein to disabilities removed had been omitted: L. P. (Amend.) A., 1924, s. 9, and 9th Sch., para. 2.

Payment into court.

Rather than ascertain the whereabouts of an estate owner who has been lost sight of, the promoters may prefer to execute a deed poll under L. Clauses A., 1845, s. 77, and pay the money into court; see also s. 203, *inf.*

Expenses.

"To avoid expense." The costs, *e.g.*, of obtaining the appointment of S. L. A. trustees, are under sub-ss. (1) and (2), *sup.*, notwithstanding a "stipulation" thrown on the vendor; s. 80 of the L. Clauses A., 1845, throwing certain costs on the promoters, is not a "stipulation." Still the costs of appointing S. L. A. trustees would be less than the costs involved by payment of the compensation into court.

(8) A vendor shall not have any power to rescind a contract by reason only of the enforcement of any right under this section.

The s. as respects legal estates negatives the principle in *Re Deighton & Harris*, 1898, 1 Ch. 458. An order for specific performance may order a special trust for sale (s. 2, *sup.*) or special settlement (S. L. A., 1925, s. 21) to be executed by the vendor.

No power to rescind.

Nor has a vendor power to rescind if the purchaser insists on a power of attorney or an office copy thereof being handed over: s. 125, *inf.*

(9) This section only applies in favour of a purchaser for money or money's worth.

"Purchaser."

For definition of "purchaser": s. 205 (1) (xxi).

43.—(1) Where a purchaser of a legal estate is entitled to acquire the same discharged from an equitable interest which is protected by registration as a pending action, annuity, writ, order, deed of arrangement or land charge, and which will not be overreached by the conveyance to him, he may notwithstanding any stipulation to the contrary, require—

Rights protected by registration.

(a) that the registration shall be cancelled; or

(b) that the person entitled to the equitable interest shall concur in the conveyance;

and in either case free of expense to the purchaser.

(2) Where the registration cannot be cancelled or the person entitled to the equitable interest refuses to concur in the conveyance, this section does not affect the right of any person to rescind the contract.

Protection of purchaser.

The object of this s. is to give a purchaser a right to have a proper title made free of expense to him. In view of s. 42 it would have been more correct to have referred in para. (b) to a separate release, instead of concurrence in the conveyance.

See L. C. A., 1925, Pt. I. (pending actions), Pt. II. (annuities), Pt. III. (writs and orders), Pt. IV. (deeds of arrangement), Pt. V. (land charges), Pt. VI. (local land charges).

What interests are not overreached.

As to equitable interests protected by registration which are not overreached by a conveyance, see s. 2 (3), (5), *sup.*; also S. L. A., 1925, ss. 21 (2), 72 (2), (3).

Cancellation.

As to cancellation of registration of a pending action: L. C. A., 1925, s. 2 (7); of an annuity: s. 4 (3); of writs and orders: s. 6 (5) and (6); of deeds of arrangement: s. 8 (3); of land charges: ss. 10 (8), 19 (1) (b) and rules thereunder.

Equitable interests which cannot be protected by registration.

An equitable charge which arises under a trust for sale or a settlement, or affects an interest arising under a trust for sale or settlement, cannot be registered as a land charge: L. C. A., 1925, s. 10, Class C. (iii); the reason is that such a charge is already protected by the fact that the proceeds of sale or capital money must be paid to at least two individual trustees or a trust corporation. If such a charge is in fact registered, the registration can be ignored: see ss. 198 (2), 199 (1) (i), *inf.*

What equitable interests are overreached though registered.

If title is made by a tenant for life, trustees for sale or personal representatives, an annuity within L. C. A., 1925, Pt. II., a limited owner's charge (*ib.*, s. 10, Class C. (ii)) and a general equitable charge (*ib.*, Class C. (iii)), though registered, will be overreached, for the charge is shifted to the proceeds: S. L. A., 1925, s. 72 (3); L. P. A., 1925, s. 28; Ad. of E. A., 1925, s. 39; see also s. 2 (3) (v), *sup.* In such cases there is no need to cancel the registration or obtain the concurrence of the person entitled to the equitable interest.

Puisne mortgages.

A "puisne mortgage" within L. C. A., 1925, s. 10, Class C. (i), is a legal mortgage, hence is not within this s. The mortgagee must join in the conveyance unless his estate is defeated or bound by the exercise of a power of sale (ss. 88, 89 and 101, *inf.*) or power of leasing: s. 99, *inf.* See also, as to puisne mortgages, s. 97, *inf.* (priorities); ss. 197, 198 (notice); 1st Sch., Pt. VII., para. 6; Pt. VIII., para. 5 (remain equitable interests for certain purposes unless registered).

Power to rescind.

Under sub-s. (2) either the vendor, if he cannot obtain the cancellation or concurrence, or the purchaser, if a good title cannot be made free from the interest, can rescind the contract under an express or implied power.

Statutory commencements of title.

44.—(1) After the commencement of this Act thirty years shall be substituted for forty years as the period of commencement of title which a purchaser of land may require; nevertheless earlier title than thirty years may be required in cases similar to those in which earlier title than forty years might immediately before the commencement of this Act be required.

This sub-s., with an amendment, replaces V. & P. A., 1874, s. 1, which substituted forty years as the period of commencement of title for sixty years, and provided that earlier title than forty years might be required in cases similar to those in which earlier title than sixty years might previously have been required. As to such cases, see Dart, V. & P., 7th ed., p. 322; Williams, V. & P., 3rd ed., p. 90; 25 Hals. L. of E., 343. For contrary intention: sub-s. (11), *inf.*

Thirty years substituted for forty.

"Land" in this Act includes land of any tenure, and an easement, right, privilege, or benefit in, over, or derived from land, but not an undivided share in land: s. 205 (1) (ix).

Definition of "land."

A right of way is within this s.: *ib.*; *Jones* v. *Watts*, 1889, 43 Ch. D. 574. And see Co. Litt. 19 b, 20 a.

Right of way.

In the case of a leasehold interest more than thirty years old the vendor must produce the lease, but need not show the later title more than thirty years old: *Williams* v. *Spargo*, 1893, W. N. 100.

Leaseholds.

Under the V. & P. A., 1874, a purchaser who agreed to take less than a forty years' title had constructive notice of anything which would have been disclosed by the abstract, if a proper forty years' title had been shown: *Re Cox & Neve*, 1891, 2 Ch. 109; *Re Nisbet & Potts*, 1905, 1 Ch. 391; 1906, 1 Ch. 386; but see now sub-s. (8) of this s. And as to constructive notice generally: s. 199, *inf.*

Constructive notice.

On an open contract a vendor whose title is possessory must either show possession for thirty years: *Jacobs* v. *Revell*, 1900, 2 Ch. 858; or a documentary title for such part of the thirty years as is anterior to the commencement of the possession: *Re Atkinson & Horsell*, 1912, 2 Ch. 1, at pp. 11, 19. Where title is to be shown as from a stipulated date a purchaser can be compelled to take a possessory title commencing at a later date: *S. C.* In all such cases a vendor may have to show an earlier title than thirty years to prove that the possession has given him an absolute title under the Limitation Acts.

Title under Limitation Acts.

As to mortgagees acquiring title under those Acts: ss. 88 (3) and 89 (3), *inf.* For general savings: ss. 12 and 14, *sup.*

(2) Under a contract to grant or assign a term of years, whether derived or to be derived out of freehold or leasehold land, the intended lessee or assign shall not be entitled to call for the title to the freehold.

This sub-s. replaces the first rule in V. & P. A., 1874, s. 2.

Freehold title.

Under such a contract production cannot be called for, even under the rules as to the right of a litigant to discovery, unless a distinct issue is raised as to the validity of the title: *Jones* v. *Watts*, 1889, 43 Ch. D. 574.

"Discovery" by litigant.

An agreement by the freeholder to deliver to the intended lessee an abstract of his title to grant the lease shows a contrary intention: see sub-s. (11); *Re Pursell & Deakin*, 1893, W. N. 152.

Stipulation to the contrary.

The rule that a lessee had constructive notice of his lessor's title was not altered by the V. & P. A., 1874, s. 2, but is now altered by sub-s. (5), *inf.* Under the V. & P. A., 1874, he was in the same position with regard to notice as if he had before that Act stipulated not to inquire into his lessor's title: *Patman* v. *Harland*, 1881, 17 Ch. D. 353, 359; *Mogridge* v. *Clapp*, 1892, 3 Ch. 382, 397; *Imray* v. *Oakshette*, 1897, 2 Q. B. 218. S. 3 of C. A., 1882, as to notice, made no alteration in the case of a person who entered into a contract whereby he precluded himself from "making such inquiries and inspections as ought reasonably to have been made."

Rule that lessee has notice of lessor's title is altered.

(3) Under a contract to sell and assign a term of years derived out of a leasehold interest in land, the

intended assign shall not have the right to call for the title to the leasehold reversion.

Leasehold reversion. Title to underlease.

This sub-s. replaces C. A., 1881, s. 3 (1). It places the title to an underlease, in regard to showing the lessor's title, on the same footing as the title to a lease from the freeholder. Under C. A., s. 3 (1), the assignee had constructive notice of the underlessor's title: *Patman* v. *Harland*, 1881, 17 Ch. D. 353; *Re Cox & Neve*, 1891, 2 Ch. 109, 117; *Mogridge* v. *Clapp*, 1892, 3 Ch. 382, 394, 397; *Imray* v. *Oakshette*, 1897, 2 Q. B. 218. But see now sub-s. (5) of this s.

The dictum in reference to C. A., s. 3 (1), at the end of the judgment in *Gosling* v. *Woolf*, 1893, 1 Q. B. 39, seemed to ignore the distinction between the grant of a term "*de novo*," to which sub-s. (4) of this s. related, and the assignment of an existing term, to which this sub-s. relates.

How far objections, &c. are precluded.

This sub-s. and s. 45 (1) preclude the purchaser from calling for or making any requisition, objection, or inquiry as to the underlessor's title, as between vendor and purchaser, but it does not alter the rule enabling the purchaser to prove the lease to be defective *aliunde*: and see note to s. 45 (1), *inf.*

(4) On a contract to grant a lease for a term of years to be derived out of a leasehold interest, with a leasehold reversion, the intended lessee shall not have the right to call for the title to that reversion.

Superior leasehold reversion. What title to be shown by leaseholder selling or leasing.

This sub-s. replaces C. A., 1881, s. 13.

The effect of this sub-s. and sub-s. (2) on a contract to grant a lease, not excluding these provisions (see sub-s. (11), *inf.*), is as follows:—

The intending lessee—

(1) Cannot, whether the intending lessor be freeholder or leaseholder, call for the title to the freehold.

(2) But can, if the intending lessor be a leaseholder, call for his lease and the title thereto.

(3) Cannot, where the intending lessor holds by underlease, call for the title of the superior leasehold reversion on such underlease.

In contradistinction to a freeholder, the leaseholder is still left under liability to show his own lease and his title thereto: see *Gosling* v. *Woolf*, 1893, 1 Q. B. 39; better reported 41 W. R. 106; 68 L. T. 89. This is in accordance with the usual practice, though probably a lessee at a rack rent seldom calls for his lessor's title: see *Clayton* v. *Leech*, 1889, 41 Ch. D. 103, 105, 106. The freeholder almost invariably bars himself from showing his own title on granting a lease, but a leaseholder does not generally do so.

This sub-s. does not absolve an intending lessor from the duty of telling his intended lessee of any defect of title: *per* Kay, J., in *Creswell* v. *Davidson*, 1887, 56 L. T. 811.

(5) Where by reason of any of the three last preceding subsections, an intending lessee or assign is not entitled to call for the title to the freehold or to a leasehold reversion, as the case may be, he shall not, where the contract is made after the commencement of this Act, be deemed to be affected with notice of any matter or thing of which, if he had contracted that such title should be furnished, he might have had notice.

Lessee has no

This sub-s. overrules the decisions in *Patman* v. *Harland*, 1881, 17 Ch. D.

353, 359; *Mogridge* v. *Clapp*, 1892, 3 Ch. 382, 397; *Imray* v. *Oakshette*, 1897, 2 Q. B. 218, on this point. See note to sub-s. (2), *sup.*

constructive notice of title to reversion save of the lease out of which an underlease is to be granted.

This sub-s. would not protect an intending lessee or assign unless he is acting in good faith; thus if he has reasonable grounds for suspecting some defect, he ought to investigate the matter. This sub-s. does not prevent restrictive covenants, registered under L. C. A., 1925, from being binding on a lessee: s. 198, *inf.*

(6) Where land of copyhold or customary tenure has been converted into freehold by enfranchisement, then, under a contract to sell and convey the freehold, the purchaser shall not have the right to call for the title to make the enfranchisement.

This sub-s. replaces C. A., 1881, s. 3 (2).

Enfranchisement under L. P. A. 1922.

Copyhold land enfranchised by the L. P. A., 1922, Pt. V., is freed from any estate, right, charge or interest affecting the manor: 12th Sch., para. (1) (e); but the lord's sporting rights, rights to minerals, fairs, markets, &c. are preserved: *ib.*, para. (5).

On the extinguishment of manorial incidents, title is shown by statutory declaration: L. P. A., 1922, s. 138 (5) (ii), (iii); and see sub-s. (7), *inf.*

Enfranchisement before 1926.

Under this sub-s. the title to the freehold of land formerly copyhold and enfranchised before 1926 is placed on the same footing as the title to a lease, and commences with the deed of enfranchisement or award. This sub-s. should be read in connexion with s. 45 (1), under which a purchaser is precluded from requiring production of documents recited in the enfranchisement deed or award, and is bound to assume the correctness of the recitals.

Mineral rights reserved.

A purchaser of enfranchised land, described in the contract as freehold, but shown to have been formerly copyhold, where the minerals have been reserved to the lord, may object to the title unless the contract discloses the reservation: *Upperton* v. *Nickolson*, 1871, 6 Ch. 436, 444; *Bellamy* v. *Debenham*, 1891, 1 Ch. 412; *cf. Kerr* v. *Pawson*, 1858, 25 Beav. 394; *Re Jackson & Haden*, 1906, 1 Ch. 412.

Documents.

As to production of documents: L. P. A., 1922, ss. 144, 144A; the form of a compensation agreement contains acknowledgments of right to production: *ib.*, 13th Sch., Pt. I. As to the old law, see *Re Agg-Gardner*, 1884, 25 Ch. D. 600, 604; *cf. Re Pursell & Deakin*, 1893, W. N. 152.

(7) Where the manorial incidents formerly affecting any land have been extinguished, then, under a contract to sell and convey the freehold, the purchaser shall not have the right to call for the title of the person entering into any compensation agreement or giving a receipt for the compensation money to enter into such agreement or to give such receipt, and shall not be deemed to be affected with notice of any matter or thing of which, if he had contracted that such title should be furnished, he might have had notice.

Purchaser not concerned with title to extinguish manorial incidents.

The sub-s. operates to exempt a purchaser from inquiry after the extinguishment. The tenant who obtains extinguishment is concerned to see that the agreement and receipt are in accordance with the lord's statutory declaration: L. P. A., 1922, s. 138 (5) (iii). The persons to enter into the compensation agreement are, as respects the manor, the persons who would be able to make

a title thereto on a sale, and, as respects the land, the persons who similarly could make title thereto: *ib.*, s. 138 (5).

This sub-s. does not exempt the former copyholder from the obligation to show that the enfranchised land became vested in him. But it applies whether the extinguishment was effected by agreement or by notice.

(8) A purchaser shall not be deemed to be or ever to have been affected with notice of any matter or thing of which, if he had investigated the title or made enquiries in regard to matters prior to the period of commencement of title fixed by this Act, or by any other statute, or by any rule of law, he might have had notice, unless he actually makes such investigation or enquiries.

No constructive notice to purchaser as to matters before statutory commencement of title.

This sub-s. confirms retrospectively the decisions in *Re Cox & Neve*, 1891, 2 Ch. 109; *Re Nisbet & Potts*, 1905, 1 Ch. 391; 1906, 1 Ch. 386, on this point; a purchaser will still have constructive notice if he contracts to take less than a thirty years' title where the defect would have been disclosed if the thirty years' title had been investigated.

(9) Where a lease whether made before or after the commencement of this Act, is made under a power contained in a settlement, will, Act of Parliament, or other instrument, any preliminary contract for or relating to the lease shall not, for the purpose of the deduction of title to an intended assign, form part of the title, or evidence of the title, to the lease.

Contract for lease not part of title to lease.

This sub-s. replaces C. A., 1882, s. 4. The effect is to prevent a purchaser of the lease, after it is granted, requiring as part of his title an abstract and production of the contract under which it was granted.

See also S. L. A., 1925, s. 90 (4), which also extends to contracts to grant options. In settlements express powers to lease can only operate as extensions of the statutory powers: *ib.*, s. 108.

(10) This section, save where otherwise expressly provided, applies to contracts for sale whether made before or after the commencement of this Act, and applies to contracts for exchange in like manner as to contracts for sale, save that it applies only to contracts for exchange made after such commencement.

Extent of s.

The s. now applies to contracts for exchange of land as well as for sales.

(11) This section applies only if and so far as a contrary intention is not expressed in the contract.

This enables the contract to fix the date for commencement of title.

Other statutory conditions of sale.

45.—(1) A purchaser of any property shall not—

(a) require the production, or any abstract or copy, of any deed, will, or other document, dated or made before the time prescribed by law, or stipulated for the commencement of the

title, even though the same creates a power subsequently exercised by an instrument abstracted in the abstract furnished to the purchaser; or

(b) require any information, or make any requisition, objection, or inquiry, with respect to any such deed, will, or document, or the title prior to that time, notwithstanding that any such deed, will, or other document, or that prior title, is recited, agreed to be produced, or noticed;

and he shall assume, unless the contrary appears, that the recitals, contained in the abstracted instruments, of any deed, will, or other document, forming part of that prior title, are correct, and give all the material contents of the deed, will, or other document so recited, and that every document so recited was duly executed by all necessary parties, and perfected, if and as required, by fine, recovery, acknowledgment, inrolment, or otherwise:

Provided that this subsection shall not deprive a purchaser of the right to require the production, or an abstract or copy of—

(i) any power of attorney under which any abstracted document is executed; or

(ii) any document creating or disposing of an interest, power or obligation which is not shown to have ceased or expired, and subject to which any part of the property is disposed of by an abstracted document; or

(iii) any document creating any limitation or trust by reference to which any part of the property is disposed of by an abstracted document.

This sub-s. replaces C. A., 1881, s. 3 (3), save that the proviso is new.

This sub-s. and sub-ss. (4) and (5) are not confined to land. "Any property."

This sub-s. does not prevent objection if the recitals show a bad or insufficient title (though after 1925, on dealings with legal estates, recitals generally will not do more than refer to documents creating equitable interests) or prevent objection if the purchaser can show *aliunde* that the title is bad, *e.g.*, that there are restrictive covenants affecting the land: *Nottingham, &c. Brick Co.* v. *Butler*, 1885, 15 Q. B. D. 261; 16 *ib.* 778; *Re Cox & Neve*, 1891, 2 Ch. 109; *Re Nisbet & Potts*, 1905, 1 Ch. 391; 1906, 1 Ch. 386. But a restrictive covenant made after 1925 will not affect a purchaser unless a land charge is registered: L. C. A., 1925, s. 10, Class D. (ii), and s. 13 (2). Defects of title appearing from recitals or *aliunde*.

Where the root of title is an underlease, an objection, founded on the fact that it comprises part only of the property in the head lease, is not an objection to the prior title, but to the actual title which the vendor proposes to make: "Prior title" as distinguished from title proposed to be made.

Re Lloyds Bank, Ltd. & Lillington, 1912, 1 Ch. 601; and see General Conditions of 1925, cl. 15 (4), which intentionally leaves this point untouched, though in view of s. 146 (4), *inf.*, the objection loses its substance.

Contract should still fix date for commencement of title.

It is still advisable to provide expressly in all contracts as to the date at which the title is to commence. S. 44 (1) leaves it open, where this is not done, to require an earlier title than thirty years in cases similar to those in which an earlier title than forty years could previously have been required. Thus where the first abstracted instrument was a will containing a general devise, or a conveyance under a trust for sale, or under a power, or the bar of an entail, or contained recitals or other matter throwing a reasonable doubt upon the title as respects the contents or construction of the earlier documents, a purchaser was, under the old law, entitled to an abstract of the earlier title, and it may be said that the time back to which that earlier title should be shown is the time "prescribed by law for commencement of the title" within this sub-s.: see *Parr* v. *Lovegrove*, 1857, 4 Dr. 170; Dart, V. & P., 7th ed., 331 *et seq.* But having regard to the express language of this sub-s. no objection could now be taken to an instrument as a root of title, merely on the ground that it exercised a power, but subject to the proviso, which is new.

Probates; disentailing assurances; powers.

Wills taking effect after 1925 do not affect the title to legal estates; the probate will be the material document. Again, a disentailing assurance can only affect equitable interests, while express powers to sell (as opposed to trusts), save so far as they extend the S. L. A. powers, will be useless for the purpose of making title.

Nature of document to be stated.

Where it is stipulated that the title should commence with a particular instrument, the nature of the instrument should in every case be clearly stated in the contract: *Re Marsh & Earl Granville*, 1882, 24 Ch. D. 11; and see 43 Sol. J. 638. If this is not done, and the instrument was made less than thirty years back under circumstances in which ordinarily there would be no investigation of title, *e.g.*, in the case of a voluntary settlement (*Re Marsh & Earl Granville, sup.*), the purchaser might successfully resist specific performance. Settlements made after 1925 will not come on the title. As to voluntary conveyances: ss. 172, 173, *inf.*

Document must relate to the whole estate.

It is conceived that, unless the contract expressly provides otherwise, a condition that the title should commence with a particular deed, the date of which is specified, is not sufficient if such deed does not deal with the whole estate, legal or equitable, contracted to be sold, *e.g.*, is a transfer of mortgage, or a conveyance of the mortgagor's estate; and in such a case no *time* is stipulated for commencement of the title to any estate or interest not dealt with by such deed. After 1925 there will be no conveyances of an equity of redemption in land, for a mortgagee can only have a mortgage term or sub-term.

Powers of attorney (para. (i) of proviso).

By s. 125 (2), *inf.*, a purchaser is entitled to have a power of attorney created after 1925 affecting his title, or an office copy thereof or of the material portions thereof, delivered to him free of charge. As to powers of attorney under which copyhold land (now enfranchised) has been dealt with, see General Conditions of 1925, cl. 14 (6) (b).

Interest, &c. which is not shown to have expired, &c.

Para. (ii) of the proviso is confined to the operation of this sub-s., which relates to property generally; as respects land, it has special reference to leases. It is immaterial that an abstracted document should have conveyed land expressly subject to some interest, &c., if that interest is one which will be overreached by the conveyance to the purchaser. For the principles governing the preparation of abstracts of title to land: ss. 10, 206, and 6th Sch.

Documents referred to (para. (iii) of proviso).

Similarly if a vesting instrument refers to a trust instrument, or a conveyance or assent on trust for sale refers to the instrument which governs the trusts affecting the proceeds of sale of land, neither the trust instrument or the settlement of the proceeds of sale will be abstracted: S. L. A., 1925, s. 110; L. P. A., 1925, s. 27.

Even where trusts of mortgage debts are disclosed, a purchaser is not concerned to investigate the equitable title to the mortgage money or the appointment or discharge of trustees: s. 113, *inf.*

Subject to the above remarks, para. (iii) overrules *Re Earl of Arran & Knowlesden*, 1912, 2 Ch. 141.

(2) Where land sold is held by lease (other than an under-lease), the purchaser shall assume, unless the contrary appears, that the lease was duly granted; and, on production of the receipt for the last payment due for rent under the lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the lease have been duly performed and observed up to the date of actual completion of the purchase.

(3) Where land sold is held by under-lease, the purchaser shall assume, unless the contrary appears, that the under-lease and every superior lease were duly granted; and, on production of the receipt for the last payment due for rent under the under-lease before the date of actual completion of the purchase, he shall assume, unless the contrary appears, that all the covenants and provisions of the under-lease have been duly performed and observed up to the date of actual completion of the purchase, and further that all rent due under every superior lease, and all the covenants and provisions of every superior lease, have been paid and duly performed and observed up to that date.

Sub-ss. (2) and (3) replace C. A., 1881, s. 3 (4) and (5).

Title to give receipt for rents.

As to evidence of the authority of the person to give receipts for rent referred to in the above two sub-ss., see General Conditions of 1925, cl. 15 (7).

"Unless the contrary appears."

"Unless the contrary appears." The receipt is only *primâ facie* evidence: *Re Highett & Bird*, 1903, 1 Ch. 287; *Re Taunton, &c. Society & Roberts*, 1912, 2 Ch. 381. And, though the purchaser has knowledge of breaches of covenant at the date of the contract, the vendor is bound to remedy them, if he expressly agrees to make a good title: *Barnett* v. *Wheeler*, 1841, 7 M. & W. 364; *Re Highett & Bird, sup.*, as explained by Romer, J., in *Re Allen & Driscoll*, 1904, 2 Ch. 226, at p. 231; and also, it is conceived, even where he has not *expressly* so agreed, unless it is part of the bargain, or the purchaser had notice, that the breaches would not be remedied, see *Clarke* v. *Coleman*, 1895, W. N. 114; *Re Martin*, 1912, 106 L. T. 381; *Lockharts* v. *Rosen*, 1922, 1 Ch. 433; Williams, V. & P., 2nd ed., pp. 353—6; 56 Sol. J. 759.

"The receipt."

The receipt of the superior landlord for ground rent paid by the tenant under threat of distress is not sufficient under sub-s. 3: *Re Higgins & Percival*, 1888, 57 L. J. Ch. 807. As to the purchaser's right when the title to the reversion is in dispute, see *Pegler* v. *White*, 1864, 33 Beav. 403. As to what will be evidence of no breach, where no receipt is forthcoming, see *Ringer to Thompson*, 1881, 51 L. J. Ch. 42.

Sub-ss. 2 and 3 cover breaches after the contract and up to completion in all cases where a rent is reserved: see *Lawrie* v. *Lees*, 1879, 14 Ch. D. 249;

Lease at a nominal rent.

7 A. C. 19. But they do not apply to the exceptional case of a lease at a peppercorn rent which cannot be "paid" (*Re Moody & Yates*, 1885, 28 Ch. D. 661; 30 *ib.* 344), nor it seems in any case where a rent in kind is reserved (*S. C.*, 30 *ib.* at p. 346); in such cases it should be expressly provided, as in General Conditions of 1925, cl. 15 (6), that the mere fact of possession at the time of completion of the purchase is to be sufficient evidence of performance.

Sale of mortgage term.

A special condition will also be necessary where a sub-term created for mortgage purposes is sold when the head-term cannot be conveyed: s. 89 (1) (6), *inf.*; and see notes to s. 42 (4) (i), (5), *sup.*

(4) On a sale of any property, the following expenses shall be borne by the purchaser where he requires them to be incurred for the purpose of verifying the abstract or any other purpose, that is to say—

(a) the expenses of the production and inspection of all Acts of Parliaments, inclosure awards, records, proceedings of courts, court rolls, deeds, wills, probates, letters of administration, and other documents, not in the possession of the vendor or his mortgagee or trustee, and the expenses of all journeys incidental to such production or inspection; and

(b) the expenses of searching for, procuring, making, verifying, and producing all certificates, declarations, evidences, and information not in the possession of the vendor or his mortgagee or trustee, and all attested, stamped, office, or other copies or abstracts of, or extracts from, any Acts of Parliament or other documents aforesaid, not in the possession of the vendor or his mortgagee or trustee;

and where the vendor or his mortgagee or trustee retains possession of any document, the expenses of making any copy thereof, attested or unattested, which a purchaser requires to be delivered to him, shall be borne by that purchaser.

Expenses to be borne by purchaser.

This sub-s. replaces C. A., 1881, s. 3 (6), with amendments, as respects documents in the possession of a trustee or mortgagee of the vendor.

See generally as to documents, General Conditions of 1925, cl. 34.

Expenses of production.

As to the expense of producing documents and of attested copies which, but for this sub-s., would be borne by the vendor, see Sug. V. & P., 14th ed., pp. 446—53. This sub-s. alters the rule as to the expense of journeys established by *Hughes* v. *Wynne*, 1836, 8 Sim. 85.

Documents not in possession of vendor, &c.

Expenses in reference to documents and abstracts of documents not in the possession of the vendor or his mortgagee or trustee, even if they are the root of or links in the title, and he can procure their production, are, by this sub-s., thrown on the purchaser: see *Re Willett & Argenti*, 1889, 60 L. T. 735 (a case as to mortgagees overruled by this sub-s.); *Re Ebsworth & Tidy*, 1889,

42 Ch. D. 23, 24 (a case as to trustees, also overruled by this sub-s.); *Re Stuart & Olivant,* 1896, 2 Ch. 328; this was the intention; and see General Conditions of 1925, cl. 34 (6). In the case of *Re Johnson & Tustin,* 1884, 28 Ch. D. 84, Pearson, J., considered that this sub-s. enabled a vendor who had no deeds in his possession except the conveyance to himself to throw on the purchaser the whole expense of making an abstract of the prior title, but this decision was reversed: 30 *ib.* 42. Every document of title, from the commencement of the title, except (in case of title being shown to a legal estate in land) instruments relating only to interests or powers which will be overreached by the conveyance, s. 10, *sup.*, must be abstracted in chief by the vendor: *Re Ebsworth & Tidy, sup.* at p. 34; *Re Stamford, &c., Bank & Knight,* 1900, 1 Ch. 287. If there are any documents of which the vendor cannot procure the production he should protect himself against production by a special condition: *Re Halifax, &c. Co. & Wood,* 1898, 79 L. T. 536, as in General Conditions of 1925, cl. 34 (6). But a vendor need not either produce or procure an acknowledgment or a covenant for the production of a document which it is in fact impossible to produce, such as a document of record in a foreign country, though he must give sufficient secondary evidence of its contents: *Halkett* v. *Earl of Dudley,* 1907, 1 Ch. 590.

Where documents cannot be produced.

The sub-s. does not affect the purchaser's right to have, at the vendor's expense, the title deeds on completion: *Re Duthy & Jesson,* 1898, 1 Ch. 419. As to this, see sub-s. 9, *inf.*, also General Conditions of 1925, cl. 34 (6).

Deeds to be handed over.

Where the lessee covenants to complete a house to the satisfaction of the lessor's surveyor, the certificate of the surveyor as to completion is part of the title, and it must be obtained at the vendor's expense: *Re Moody & Yates,* 1885, 28 Ch. D. 661; 30 *ib.* 344; and the same principle applies to a certificate under s. 11 of the Finance Act, 1894: *Re Conlon & Faulkener,* 1916, 1 Ir. R. 241; but where the vendor's title depended on proof of a fact, *e.g.*, heirship, and the fact was stated in the abstract or in the answers to requisitions, the expense of verifying the fact must be borne by the purchaser: *Re Conlon & Faulkener, sup.; Re Wright & Thompson,* 1920, 1 Ch. 191.

Cases not within this sub-s.

Certificate of discharge of death duty.

Heirship, possession, pedigrees.

After 1925 there can (with one exception) be no devolution to an heir on an intestacy: Ad. of E. A., 1925, Pt. IV.; though heirs can take equitable interests by purchase: ss. 131, 132, *inf.;* Ad. of E. A., 1925, s. 51; heirs of the body can take equitable interests by purchase or descent: 130, *inf.;* Ad. of E. A., 1925, s. 45 (2). But after 1925 questions of heirship and pedigree will be kept off the legal title.

Negative searches in the Irish Deeds Registry must be furnished at the vendor's expense: *Re Murray & Hegarty,* 1885, 15 L. R. Ir. 510. The Irish practice is to furnish copies as well as an abstract: *Re Furlong,* 1889, 23 L. R. Ir. 407.

Irish searches.

(5) On a sale of any property in lots, a purchaser of two or more lots, held wholly or partly under the same title, shall not have a right to more than one abstract of the common title, except at his own expense.

This sub-s. replaces C. A., 1881, s. 3 (7).

Sale in lots, abstracts.

(6) Recitals, statements, and descriptions of facts, matters, and parties contained in deeds, instruments, Acts of Parliament, or statutory declarations, twenty years old at the date of the contract, shall, unless and

except so far as they may be proved to be inaccurate, be taken to be sufficient evidence of the truth of such facts matters, and descriptions.

This sub-s. replaces the second rule in V. & P. A., 1874, s. 2.

It is conceived that the deeds, &c. must be deeds, &c. affecting the land contracted to be sold.

Effect of recital of seisin, &c. twenty years old.

In *Bolton* v. *London School Board*, 1878, 7 Ch. D. 766, a recital in a deed more than twenty years old that a vendor was seised in fee simple was held sufficient evidence of that fact, precluding the purchaser from demanding a prior abstract, except so far as the recital was proved to be inaccurate. This decision, which in effect negatived the recognised right of a purchaser to a proper abstract of title extending over the statutory period, was expressly disapproved in *Re Wallis & Grout*, 1906, 2 Ch. 206, and it is submitted was wrong.

As to the effect of a recital under this s., see also *Re Marsh & Earl Granville*, 1882, 24 Ch. D. 11.

(7) The inability of a vendor to furnish a purchaser with an acknowledgment of his right to production and delivery of copies of documents of title or with a legal covenant to produce and furnish copies of documents of title shall not be an objection to title in case the purchaser will, on the completion of the contract, have an equitable right to the production of such documents.

This sub-s. replaces the third rule in V. & P. A., 1874, s. 2, as modified by C. A., s. 9 (8).

"Inability to furnish."

A vendor must do his best to procure for the purchaser an acknowledgment with respect to documents not in his possession; this rule only applies if his endeavours are unsuccessful.

Purchaser's equitable right to production of documents.

As to the purchaser's equitable right to production of documents, see Sug. V. & P., 14th ed., c. 11, s. 5; Dart, 7th ed., 483 *et seq.*; *Fain* v. *Ayers*, 1826, 2 Sim. & St. 533; Elph. Intro. to Conv., 7th ed., 143, 144; a mortgagor's right to production only extends while there is a right of redemption: s. 96, *inf.*

Documents which cannot be "produced."

As to documents which it is impossible to produce, *e.g.*, lost documents, and documents of record in a foreign country, see *Re Halifax, &c. Co. & Wood*, 1898, 79 L. T. 536; *Halkett* v. *Earl of Dudley*, 1907, 1 Ch. 590, 603, 604; also General Conditions of 1925, cl. 34 (6).

(8) Such acknowledgments of the right of production or covenants for production and such undertakings or covenants for safe custody of documents as the purchaser can and does require shall be furnished or made at his expense, and the vendor shall bear the expense of perusal and execution on behalf of and by himself, and on behalf of and by necessary parties other than the purchaser.

Expense of procuring acknowledgments.

This sub-s. replaces the fourth rule in V. & P. A., 1874, s. 2, as modified by C. A., s. 9 (8); and see note to last sub-s.

(9) A vendor shall be entitled to retain documents of title where—

(a) he retains any part of the land to which the documents relate; or

(b) the document consists of a trust instrument or other instrument creating a trust which is still subsisting, or an instrument relating to the appointment or discharge of a trustee of a subsisting trust.

Retention of documents by vendor.

Documents not relating to land.

Documents relating to easement over land retained.

This sub-s. replaces the fifth rule in V. & P. A., 1874, s. 2, with amendments.

A vendor is not entitled to retain documents which do not relate to any *land* retained by him, but only to personal property other than chattels real: *Re Williams & Duchess of Newcastle*, 1897, 2 Ch. 144; but see Williams, V. & P., 2nd ed., p. 681.

The vendor was entitled to retain documents showing the title to an easement formerly appurtenant to the land sold over land retained by the vendor: *Re Lehmann & Walker*, 1906, 2 Ch. 640; but now "land" includes an easement: s. 205 (1) (x), and documents relating to the easement ought to be handed over unless they also relate to land retained.

Acknowledgment substituted for covenant.

Contracts for sale, where the vendor retains any documents, should provide for giving an acknowledgment in writing of the right of the purchaser to the production, and delivery of copies under s. 64, *inf.*, and, where he is beneficial owner, also an undertaking for safe custody. The liability to give the covenant for production, if incurred after 1881, is satisfied by an acknowledgment: s. 64 (8) (14); see also General Conditions of 1925, cl. 34.

As to the costs of attested and other copies of documents retained by the vendor, see sub-s. (4), *sup.*

(10) This section applies to contracts for sale made before or after the commencement of this Act, and applies to contracts for exchange in like manner as to contracts for sale, except that it applies only to contracts for exchange made after such commencement:

Provided that this section shall apply subject to any stipulation or contrary intention expressed in the contract.

Extent of s.

This sub-s. reproduces C. A., 1881, s. 3 (8), (9), (10), but extends it to exchanges.

(11) Nothing in this section shall be construed as binding a purchaser to complete his purchase in any case where, on a contract made independently of this section, and containing stipulations similar to the provisions of this section, or any of them, specific performance of the contract would not be enforced against him by the court.

Specific performance.

This sub-s. replaces C. A., 1881, s. 3 (11).

Effect of an open contract since the Act.

Under this s., taken in connexion with s. 44, *sup.*, a vendor having a title such as is usually accepted by a willing purchaser may safely enter into an open contract for sale, without fear of being put to undue expense in answering requisitions or furnishing evidence. At the same time the purchaser will not incur more risk than in buying under suitable conditions of sale, since this sub-s. reserves to him every defence in an action for specific performance. As to the conditions implied in contracts by correspondence, see form in Pt. I. of Appendix No. III.; these are not so wide as those in the General Conditions of 1925, which will generally be adopted in practice.

Contracts by correspondence.

Recovery of deposit.

Before this Act, though a purchaser might be able successfully to resist specific performance, he could not recover his deposit, if he had taken an objection, which he was precluded from taking by the previous sub-ss. of this s. or by the contract: *Re National Provincial Bk. & Marsh*, 1895, 1 Ch. 190; *Scott* v. *Alvarez*, 1895, 2 Ch. 603, 612—614; provided the contract was not induced by misrepresentation on the part of the vendor: *Nottingham, &c. Brick Co.* v. *Butler*, 1885, 15 Q. B. D. 261; 16 *ib.* 778. Now, however, the court may order repayment: s. 49 (2).

Trustees protected.

Trustees may buy or sell under contracts within this s.: see s. 182, *inf.*

Forms of contracts and conditions of sale.

46. The Lord Chancellor may from time to time prescribe and publish forms of contracts and conditions of sale of land, and the forms so prescribed shall, subject to any modification, or any stipulation or intention to the contrary, expressed in the correspondence, apply to contracts by correspondence, and may, but only by express reference thereto, be made to apply to any other cases for which the forms are made available.

Statutory forms of conditions of sale, &c.

For form of contract and conditions of sale prescribed under this s., see Appendix No. III., Pt. I., which applies to contracts by correspondence unless excluded by the letters, while the General Conditions of 1925, issued by the Law Society (see Pt. II. of that Appendix) will only apply when incorporated. The drafts of these forms were submitted to the Law Society and to provincial Law Societies with a view to securing uniformity of practice throughout the country.

The forms do not apply to sales by the court, but clauses in the General Conditions of 1925 may be incorporated in the usual court conditions by reference to the numbers, provided that the solicitors are authorised to use these conditions.

Application of insurance money on completion of a sale or exchange.

47.—(1) Where after the date of any contract for sale or exchange of property, money becomes payable under any policy of insurance maintained by the vendor in respect of any damage to or destruction of property included in the contract, the money shall, on completion of the contract, be held or receivable by the vendor on behalf of the purchaser and paid by the vendor to the purchaser on completion of the sale or exchange, or so soon thereafter as the same shall be received by the vendor.

See also General Conditions of 1925, cl. 23, which supplies the usual further provisions respecting insurance.

A contract of insurance against damage to or destruction of property, independently of this s., is a personal contract of indemnity only: *Castellain* v. *Preston,* 1883, 11 Q. B. D. 380; 17 Hals. L. of E. 512, n., 517. Contracts for indemnity.

A contract, made before 1926, for the sale or exchange of insured property does not extend, in the absence of a special stipulation, to the benefit of the insurance: *Rayner* v. *Preston,* 1881, 18 Ch. D. 1; Dart, 7th ed. 193; 17 Hals. L. of E. 520, 521; save where a lessee sells his term and he is under covenant with the lessor to insure. Contracts before 1926.

In the case of fire insurances on buildings, a purchaser is a person interested within the Fires Prevention (Metropolis) Act, 1774, and can require the office to expend the insurance money, as far as it will go, towards reinstating the buildings. That Act applies generally in England and Wales: *Ex parte Gorely,* 1864, 4 De G. J. & Sm. 477; *Re Quicke,* 1908, 1 Ch. 887; *Sinnott* v. *Bowden,* 1912, 2 Ch. 414; although this was doubted in *Westminster Fire Office* v. *Glasgow Society,* 1888, 13 A. C. 699, 714. "Purchaser" a person interested.

"Lessors" and "lessees" are, of course, "persons interested"; the lessee is allowed a reasonable time after the expiration of his term to reinstate: *Matthey* v. *Curling,* 1922, 2 A. C. 180.

The vendor is only liable under this s. to account for what he receives; after completion, unless he is under liability to a third party, he would not, it seems, have an insurable interest, hence the office, if it paid, would account direct to the purchaser. Liability of the vendor, insurable interest.

As to the application of money paid under an insurance maintained under an obligation, see T. A., 1925, s. 20. Insurances effected under an obligation.

(2) This section applies only to contracts made after the commencement of this Act, and has effect subject to—

(a) any stipulation to the contrary contained in the contract,

(b) any requisite consents of the insurers,

(c) the payment by the purchaser of the proportionate part of the premium from the date of the contract.

It has become a practice in fire policies to make a special stipulation as to the position of a purchaser, but the words "in the contract" in para. (a) relate to the contract between the vendor and purchaser. "Any stipulation to the contrary."

Being an indemnity contract, the consent of the office to recognise the purchaser as having an interest in the policy is required, independently of special stipulations in the policy, such as that above mentioned; in any case, any condition imposed by the policy would have to be complied with. Consent of the insurers.

Para. (c) imposes the usual condition to be complied with by a purchaser before he can participate.

The purchaser obtains an insurable interest on the execution of the contract. Insurable interest.

The vendor retains his insurable interest until completion: *Collingridge* v. *Royal Exchange,* 1877, 3 Q. B. D. 173.

If a loss occurs before completion, and the insurers pay the amount assured, they are subrogated to the rights of the vendor against the purchaser to the extent of that amount: *Castellain* v. *Preston, sup.; Phœnix Assurance Co.* v. *Spooner,* 1905, 2 K. B. 753; Dart, 7th ed. 194. If the purchaser re-insures, the vendor's office will be entitled to contribution. Subrogation.

Conveyance without receipt of the purchase money does not affect the vendor's insurable interest if he retains his lien: Welford & Otter-Barry, 2nd ed. 220. Vendor's lien.

Effect of completion.

After completion the vendor has no insurable interest, and cannot recover on the policy: *Collingridge* v. *Royal Exchange, sup.*, at p. 177; *N. S. W. Bank* v. *North British, &c. Insce. Co.*, 1882, 3 N. S. W. L. R. 60; Welford & Otter-Barry, 2nd ed. 221.

(3) This section applies to a sale or exchange by an order of the court, as if—

(a) for references to the "vendor" there were substituted references to the "person bound by the order";

(b) for the reference to the completion of the contract there were substituted a reference to the payment of the purchase or equality money (if any) into court;

(c) for the reference to the date of the contract there were substituted a reference to the time when the contract becomes binding.

Application to sales by the court.

Strictly the "vendor" is the court, not the person having the conduct of the sale; the material date is the payment of the money into court; the contract does not become binding till the Master makes his order.

Stipulations preventing a purchaser, lessee, or underlessee from employing his own solicitor to be void.

48.—(1) Any stipulation made on the sale of any interest in land after the commencement of this Act to the effect that the conveyance to, or the registration of the title of, the purchaser shall be prepared or carried out at the expense of the purchaser by a solicitor appointed by or acting for the vendor, and any stipulation which might restrict a purchaser in the selection of a solicitor to act on his behalf in relation to any interest in land agreed to be purchased, shall be void; and, if a sale is effected by demise or subdemise, then, for the purposes of this subsection, the instrument required for giving effect to the transaction shall be deemed to be a conveyance:

Provided that nothing in this subsection shall affect any right reserved to a vendor to furnish a form of conveyance to a purchaser from which the draft can be prepared, or to charge a reasonable fee therefor, or, where a perpetual rentcharge is to be reserved as the only consideration in money or money's worth, the right of a vendor to stipulate that the draft conveyance is to be prepared by his solicitor at the expense of the purchaser.

Abolition of Cornish custom.

Before 1926 it was the custom in Cornwall to stipulate that the conveyance should be prepared by the vendor's solicitor at the expense of the purchaser: but this was regarded with disfavour: Dart, 7th ed. 528, 818, note.

"Interest in land" includes an interest in the proceeds of sale: *cf.* s. 205 (1) (x). "Purchase" has a meaning corresponding with "purchaser": s. 205 (1) (xxi). "Purchase."

As to sales by demise or sub-demise: General Conditions of 1925, cl. 24 (2) (b); the vendor's solicitor has no right to prepare the lease or underlease, but a form from which the draft can be prepared can be furnished and fee not exceeding two guineas can be charged therefor. On the other hand, the local practice of the vendor's solicitor preparing the draft conveyance where the only consideration is a perpetual rentcharge is maintained by the proviso: *ib.*, cl. 24 (2) (a). Sales by demise or sub-demise; form of conveyance. Sale in consideration of a rentcharge.

Trustees can sell by means of a demise or sub-demise: *Re Judd & Poland*, 1906, 1 Ch. 684; see also General Conditions of 1925, cl. 27 (3).

(2) Any covenant or stipulation contained in, or entered into with reference to any lease or underlease made before or after the commencement of this Act—

(a) whereby the right of preparing, at the expense of a purchaser, any conveyance of the estate or interest of the lessee or underlessee in the demised premises or in any part thereof, or of otherwise carrying out, at the expense of the purchaser, any dealing with such estate or interest, is expressed to be reserved to or vested in the lessor or underlessor or his solicitor; or

(b) which in any way restricts the right of the purchaser to have such conveyance carried out on his behalf by a solicitor appointed by him;

shall be void:

Provided that, where any covenant or stipulation is rendered void by this subsection, there shall be implied in lieu thereof a covenant or stipulation that the lessee or underlessee shall register with the lessor or his solicitor within six months from the date thereof, or as soon after the expiration of that period as may be practicable, all conveyances and devolutions (including probates or letters of administration) affecting the lease or underlease and pay a fee of one guinea in respect of each registration, and the power of entry (if any) on breach of any covenant contained in the lease or underlease shall apply and extend to the breach of any covenant so to be implied. Covenants in leases that assignments are to be prepared by vendor's solicitor.

"Lease," "underlease" include any agreement therefor: sub-s. (4); the practice abolished by this sub-s. obtained in leases granted by certain corporations.

This implied covenant to pay a fee for registration is an adequate compensation for the loss of the right to prepare the assignment; it will also keep the lessor in touch with the person liable to pay the rent. Implied covenant to register assignments.

Lessor's and lessee's covenants.

As to the saving of lessor's and lessee's covenants: s. 6, *sup.*; no land charge need be registered to protect a restrictive covenant by a lessee: L. C. A., 1925, s. 10, Class D. (ii).

Relief against forfeiture.

The court can grant relief against a breach of a covenant not to assign, &c. where the breach occurred after 1925: s. 146 (8), *inf.*

(3) Save where a sale is effected by demise or sub-demise, this section does not affect the law relating to the preparation of a lease or underlease or the draft thereof.

Costs of preparing lease or underlease.

On the grant of a lease or underlease the draft is generally prepared by the solicitor of the lessor or underlessor at the expense of the lessee or underlessee: Dart, 7th ed. 718; 18 Hals. L. of E. 402.

As to sales effected by demise or sub-demise, see note to sub-s. (1), *sup.*

(4) In this section "lease" and "underlease" include any agreement therefor or other tenancy, and "lessee" and "underlessee" and "lessor" and "underlessor" have corresponding meanings.

Definition of "lease," &c.

The definition of "lease" in s. 154 only applies to Part V. of this Act; but the definition of "lease" in s. 205 (1) (xxiii) applies generally.

Applications to the court by vendor and purchaser.

49.—(1) A vendor or purchaser of any interest in land, or their representatives respectively, may apply in a summary way to the court, in respect of any requisitions or objections, or any claim for compensation, or any other question arising out of or connected with the contract (not being a question affecting the existence or validity of the contract), and the court may make such order upon the application as to the court may appear just, and may order how and by whom all or any of the costs of and incident to the application are to be borne and paid.

Vendor and purchaser summonses.

This sub-s. reproduces V. & P. A., 1874, s. 9, so far as it relates to England. That s. applied to "real or leasehold estate," while this sub-s. applies to "any interest in land." For definition of land: s. 205 (1) (ix); see also sub-s. (x) "equitable interests"; this sub-s. would apply to "compensation agreements" made on the extinguishment of manorial incidents. It also applies to agreements for exchange: sub-s. (3), *inf.*

As to costs, see also s. 203 (5), *inf.*

Cases under this sub-s.

Leases.

Voluntary conveyances.

This sub-s. applies to a contract for a lease at a premium: *Re Anderton & Milner*, 1890, 45 Ch. D. 476; and to a lease without a premium: *Re Lander & Bagley*, 1892, 3 Ch. 41; *Re Pursell & Deakin*, 1893, W. N. 152. It applies to a contract for nominal consideration, but not to a deed of gift: *Re Marquess of Salisbury*, 1875, 23 W. R. 824.

Evidence.

In proceedings under this sub-s. the parties are in the same position as under a reference as to title in an action for specific performance, and accordingly evidence by affidavit as to questions of title raised by the requisitions is admis-

sible: *Re Burroughs & Others*, 1877, 5 Ch. D. 601. As to recovery under this sub-s. of interest wrongly paid, see *Re Young & Harston*, 1885, 29 Ch. D. 691; 31 *ib.* 168. Interest.

The deposit may be recovered with interest: *Re Smith & Stott*, 1883, 29 Ch. D. 1009 n.; *Re Hargreaves & Thompson*, 1886, 32 *ib.* 454; *Re Higgins & Percival*, 1888, 59 L. T. 213; *Re Lord & Fullerton*, 1896, 1 Ch. 228, 233; *Re Marshall & Salt*, 1900, 2 Ch. 202; *Re Walker & Oakshott*, 1901, 2 Ch. 383; but not where the purchaser could only recover the deposit by raising a question affecting the validity of the contract: *Re Davis & Cavey*, 1888, 40 Ch. D. 601; the purchaser may be allowed his costs of investigating the title: *Re Higgins & Hitchman*, 1882, 21 Ch. D. 99; *Re Yielding & Westbrook*, 1886, 31 *ib.* 344; *Re Hargreaves & Thompson* and other cases, *sup.*; the deposit with interest and costs may be charged on the vendor's interest in the property: *Re Yielding & Westbrook, sup.*; *Re Higgins & Percival, sup.*; *Re New Land Development Association & Gray*, 1892, 2 Ch. 138, 146; *Re Priestley & Davidson*, 1892, 31 L. R. Ir. 122; *Re Furneaux & Aird*, 1906, W. N. 215. Recovery of deposit with interest and costs.

The validity of a notice to rescind may be decided: *Re Jackson & Woodburn*, 1887, 37 Ch. D. 44; but not a question as to the existence or validity of the contract in its inception: see *S. C.* and *Re Davis & Cavey, sup.*; *Re Sandbach & Edmondson*, 1891, 1 Ch. 99, 102; *Re Lander & Bagley, sup.*; *Re South Eastern Ry. Co. & London County Council*, 1915, 2 Ch. 252, 255; nor as to the destination of the purchase-money, if it does not concern the purchaser: *Re Tippett & Newbould*, 1887, 37 Ch. D. 444; nor a preliminary question of fact: *Re Gray & Met. Ry. Co.*, 1881, 44 L. T. 567; nor a question of fraud: *Re Delany & Deegan*, 1905, 1 Ir. R. 602. Where a vendor's title depends upon a difficult question of construction, the proper mode of getting that question decided is by originating summons in the matter of the instrument, so as to bind all persons interested, and not by summons under this sub-s. If the vendor insists upon proceeding under this sub-s. it may be held that the title is too doubtful to force upon a purchaser: *Re Nichols & Von Joel*, 1910, 1 Ch. 43, and *Re Hogan & Marnell*, 1919, 1 I. R. 422, in each of which cases the vendor's summons under this sub-s. was adjourned to enable him to take out an originating summons, and (though in *Re Nichols & Von Joel, sup.*, the latter was decided in his favour and his title confirmed) he was ordered to pay the costs of the summons under this sub-s. And see *Re Hollis' Hospital & Hague*, 1899, 2 Ch. 540, 555, where again the title was not forced on the purchaser. What proper to be decided under sub-s. Difficult question of construction.

The court will not refuse to decide questions raised under this sub-s. merely on the ground that specific performance of the contract would not be enforced, as the contract may be effective for purposes of other relief: *Re Lander & Bagley, sup.*; or on the ground that either party may have a right to obtain rescission of the contract: *Re Wallis & Barnard*, 1899, 2 Ch. 515; *Re Hughes & Ashley*, 1900, 2 Ch. 595. Rescission.

Not every loss arising in connexion with the contract can be assessed as compensation under this sub-s.: see *Re Wilsons & Stevens*, 1894, 3 Ch. 546 (damages for delay in completion). Compensation.

The court has jurisdiction upon a vendor's summons to make an order for rescission of the contract, and return of the deposit with interest and costs: *Re Higgins & Percival, sup.*; *Re Walker & Oakshott, sup.* A vendor cannot, after a decision against him, avail himself of a condition empowering him "notwithstanding any previous . . . litigation" to rescind *without payment of costs*: *Re Arbib & Class*, 1891, 1 Ch. 601; as to the jurisdiction of the court to order the vendor to pay the costs of litigation pending at the date of rescission notwithstanding such a condition, see *Re Spindler & Mears*, 1901, 1 Ch. 908. Order on vendor's summons. Costs of litigation.

A purchaser's summons may be dismissed without costs, if it is held that he was fairly entitled to submit the question to the court: *Re Baker & Selmon*, 1907, 1 Ch. 238. Costs of summons.

Semble, where either party contracts to pay the other's costs, a question as to the amount thereof is not properly raised upon a summons under this sub-s.: *Re Webster & Jones*, 1902, 2 Ch. 551.

As to re-opening, in an action for specific performance, a question decided on a summons under this sub-s., see *Scott* v. *Alvarez*, 1895, 1 Ch. 596, 621, 622.

As to the proper course where an order under this sub-s. is not complied with: *Thompson* v. *Ringer*, 1881, 29 W. R. 520.

Practice. For forms of summons, see D. C. F. Nos. 2289, 2290. As to service out of the jurisdiction, see R. S. C., Order 11, and r. 8A. As to the time for appealing from an order under this sub-s., see *Re Blyth & Young*, 1880, 13 Ch. D. 416; *Re Walker & Oakshott*, 1902, W. N. 147.

For forms of orders made under this sub-s., see Seton, 7th ed., p. 2197 *et seq.* As to the proper form of order to be made on a successful purchaser's summons, see also *Re Lloyd's Bank, Ltd. & Lillington*, 1912, 1 Ch. 601, 610.

(2) Where the court refuses to grant specific performance of a contract, or in any action for the return of a deposit, the court may, if it thinks fit, order the repayment of any deposit.

Order for repayment of deposit. This sub-s. overrules *Re Nat. Prov. Bank & Marsh*, 1895, 1 Ch. 190; *Re Scott & Alvarez*, 1895, 1 Ch. 596; 1895, 2 Ch. 603, on this point. See *Simpson* v. *Gilley*, 1923, 92 L. J. Ch. 194, and as to the old law, see note to s. 45 (11), *sup.*

Affects form of power to re-sell. As the question of the return of the deposit is left for the decision of the court, this will alter the usual power to re-sell on default by a purchaser: Appendix No. III.; Form No. I., cl. 9; General Conditions of 1925, cl. 36.

(3) This section applies to a contract for the sale or exchange of any interest in land.

Exchanges. This sub-s., as respects exchanges, overrules *Re British Land Co. & Allen*, 44 Sol. J. 593, on this point.

Discharge of incumbrances by the court on sales or exchanges.

50.—(1) Where land subject to any incumbrance, whether immediately realisable or payable or not, is sold or exchanged by the court, or out of court, the court may, if it thinks fit, on the application of any party to the sale or exchange, direct or allow payment into court of such sum as is hereinafter mentioned, that is to say—

(a) in case of an annual sum charged on the land, or of a capital sum charged on a determinable interest in the land, the sum to be paid into court shall be of such amount as, when invested in Government securities, the court considers will be sufficient, by means of the dividends thereof, to keep down or otherwise provide for that charge; and

(b) in any other case of capital money charged on the land, the sum to be paid into court shall be

of an amount sufficient to meet the incumbrance and any interest due thereon;

but in either case there shall also be paid into court such additional amount as the court considers will be sufficient to meet the contingency of further costs, expenses and interest, and any other contingency, except depreciation of investments, not exceeding one-tenth part of the original amount to be paid in, unless the court for special reason thinks fit to require a larger additional amount.

This sub-s. reproduces C. A., 1881, s. 5 (1), with amendments. The powers conferred by this s. will seldom be required in view of s. 2, *sup.*, and S. L. A., 1925, ss. 1 (1) (v), 21 and 72; see also s. 28, *sup.*, and Ad. of E. A., 1925, s. 39.

Future rights.

For the purpose of bringing this s. into play, the court will declare future rights: *Re Freme*, 1895, 2 Ch. 256, and, on appeal, *ib.* 778, 780.

"Incumbrance."

See definition of incumbrance, s. 205 (vii); also *Re Bective Estate*, 1891, 27 L. R. Ir. 364, 369.

How application to court made.

Under s. 203 (2) (a), the application to the court will be by summons; sub-s. (2) (b) (c) and (d) of that s. provides for the notices to be given; sub-s. (5) provides for costs.

Reference to judge.

Important matters under this s. ought not to be decided by a master, but should be referred to the judge: *Re Wilberforce*, 1915, 1 Ch. 94.

Rents.

As to perpetual or terminable rents: s. 191, *inf.*, the procedure under which is cheaper and more effectual.

Facilities given for sale of enoumbered estates.

This s. originally facilitated sales of encumbered estates, when taken in connexion with ss. 90, 91, 95, 96, *inf.* It applies to ordinary sales, as well as to sales by the court.

Now that there can be no case where settled land cannot be disposed of free from family charges, seeing that there must always be a person having the powers of a tenant for life under any compound settlement; for the trustees of the settlement will have the powers when there is no tenant for life: S. L. A., 1925, s. 23, and that these powers are exercisable by trustees for sale (s. 28, *sup.*) or by personal representatives (Ad. of E. A., 1925, s. 39), the operation of this s. must, for practical purposes, be confined to cases where a legal incumbrance has priority to the settlement or trust for sale. See also General Conditions of 1925, cl. 28 (3). The s. may sometimes be valuable for defeating legal rentcharges, not created by a settlement for family purposes.

Procedure.

Under this s. and ss. 90, 91, 95, 96, *inf.*, the course will be simple. In the case of a sale by the court the proper amount can be set aside out of the purchase-money when paid in: cp. *Re Evans & Bettell*, 1910, 2 Ch. 438. In the case of a sale out of court, the owner can, when the contracts are signed, and on the faith of the incoming purchase-money or with the aid of deposits, generally procure a temporary advance of the amount required to be paid into court to answer the charges, and thus at once obtain a conveyance or vesting order (sub-s. 2, *inf.*). Under s. 203 (5) the court can direct by whom the costs of any application are to be paid.

Costs of application.

What incumbrances included.

A capital sum or an annuity payable out of rents and profits or a capital sum charged on a reversionary interest are within this s. (see s. 205 (1) (vii)). An annual sum, whether terminable or otherwise, charged on land, and a capital sum charged on a determinable interest in land, constitute the two cases where a capital sum could not be or might not properly be applied, out of the proceeds of sale, in discharge of the incumbrance. In the one case the annuitant is entitled to have payment of the annual sum continued to him; in the other case, capital money should not be applied in payment of the charge to the

prejudice of the remainderman. Therefore this s. provides for the application of dividends only in payment.

"Sufficient to meet the incumbrance."

The court has a discretion as to the amount, which is not limited to the bare amount of the capital money charged: *Re Wilberforce*, 1915, 1 Ch. 94. Thus (though as respects the "additional amount" no regard can be had to "depreciation of investments") provision can nevertheless be made for depreciation of investments. If owing to depreciation the fund paid in becomes less than the amount of the capital charge, the chargee can resort to the proceeds of sale, or to other land subject to the same charge: *S. C.*, and not freed under sub-ss. (2) and (3).

Vendor not compelled to act on this s.

It seems that a vendor will not, apart from contract, be compelled to make use of this s. for discharging an incumbrance—at least, where it would inflict hardship on him: *Re G. N. R. Co. & Sanderson*, 1884, 25 Ch. D. 788.

(2) Thereupon, the court may, if it thinks fit, and either after or without any notice to the incumbrancer, as the court thinks fit, declare the land to be freed from the incumbrance, and make any order for conveyance, or vesting order, proper for giving effect to the sale or exchange, and give directions for the retention and investment of the money in court and for the payment or application of the income thereof.

This sub-s. reproduces C. A., 1881, s. 5 (2), with amendments; the words "and for the payment or application of the income thereof" are new; these words relate to the application of income before an application is made under sub-s. (5).

Vesting orders.

As to the effect of vesting orders in favour of a purchaser: s. 9 (2), *sup.*

See *Patching* v. *Bull*, 1882, 30 W. R. 244; *Dickin* v. *D.*, 1882, *ib.* 887; *Milford, &c. Co.* v. *Mowatt*, 1884, 28 Ch. D. 402; *Archdale* v. *Anderson*, 1888, 21 L. R. Ir. 527; *Re Freme*, 1895, 2 Ch. 256, 264; *Re Wilberforce*, 1915, 1 Ch. 94; Seton, 7th ed., pp. 332, 1373.

"The land."

"The land" in this sub-s. means the land sold or exchanged. The court does not necessarily free any other land subject to the same charge: *Re Wilberforce, sup.*, at p. 104; nor the proceeds of the sale: *S. C.*; but the court has power under the next sub-s. to free all the other land subject to the same charge, and, as a rule, this power will no doubt be exercised.

(3) The court may declare all other land, if any, affected by the incumbrance (besides the land sold or exchanged) to be freed from the incumbrance, and this power may be exercised either after or without notice to the incumbrancer, and notwithstanding that on a previous occasion an order, relating to the same incumbrance, has been made by the court which was confined to the land then sold or exchanged.

Power to free other land from incumbrance.

This sub-s. is new and removes the difficulties disclosed in *Re Wilberforce, sup.*: see note to last sub-s.

Amendment of previous order.

If the incumbrance is properly provided for, there is no reason why the whole of the land should not be discharged by the original order. Under the old practice it was considered necessary to apply to the court on every sale and pay a further nominal sum into court to bring the jurisdiction into play.

If a subsequent application is made, it seems that it may be made by any person interested whether a sale or exchange is made or not, and that it will

no longer be necessary to pay a further sum into court; this sub-s. is not prefaced by "Thereupon"; it is an independent enactment, and the court can act "notwithstanding that" the previous order was confined to land then sold; in effect, the sub-s. authorises an amendment of the original order. If the money in court, independently of the land remaining charged, is not a sufficient security, then further money must be paid into court. Evidence should be directed to this point.

As to jurisdiction as respects a purchaser, see s. 204, *inf.*

(4) On any application under this section the court may, if it thinks fit, as respects any vendor or purchaser, dispense with the service of any notice which would otherwise be required to be served on the vendor or purchaser.

This sub-s. replaces C. A., 1911, s. 1.

Dispensing with service of notice.

On a sale of an estate in lots it would otherwise have been necessary to serve each purchaser with notice of the application before an order discharging the incumbrance could be obtained: s. 203 (2) (b), (c).

(5) After notice served on the persons interested in or entitled to the money or fund in court, the court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

This sub-s. replaces C. A., 1881, s. 5 (3).

Application of surplus capital.

If there is a surplus of capital, it appears to be held for the benefit of the persons for whose benefit capital money representing proceeds of sale of the land would be held: *Re Wilberforce*, 1915, 1 Ch. at p. 99; *e.g.*, the vendor or his representatives, or his S. L. A. trustees.

Of surplus income.

It is conceived that any surplus income, after paying the annual sum required for keeping down interest on the principal sum, should be paid to the vendor, and not accumulated as an addition to the fund. The decision in *Re Street*, 1922, W. N. 291, on an administration summons (appropriation to answer annuities) has no bearing on this s.

(6) This section applies to sales or exchanges whether made before or after the commencement of this Act, and to incumbrances whether created by statute or otherwise.

Extent of s.

This sub-s. reproduces C. A., 1881, s. 5 (4), with amendments. It confirms the practice adopted in *E. of Devon S. E.*, 7th May, 1896, Reg. Lib. A. 1179.

Incumbrances created by statute.

where rentcharges annexed to a benefice by a conveyance under the Ecc. Comrs. A., 1866, s. 9, were treated as within C. A., 1881, s. 5; and removes the doubt in *Re G. N. R. & Sanderson*, 1884, 25 Ch. D. 788, whether the s. applied to incumbrances created by statute.

Conveyances and other Instruments.

Lands lie in grant only.

51.—(1) All lands and all interests therein lie in grant and are incapable of being conveyed by livery or

livery and seisin, or by feoffment, or by bargain and sale; and a conveyance of an interest in land may operate to pass the possession or right to possession thereof, without actual entry, but subject to all prior rights thereto.

This s. reproduces, with amendments, R. P. A., 1845, s. 2, and C. A., 1881, s. 49; see as to "possession," Goodeve, R. P., 5th ed. 365—369.

Old forms of conveyance abolished.

This sub-s. abolishes the old forms of conveyance. Under R. P. A., 1845, s. 3, a feoffment made after 1st October, 1845, other than a feoffment made under a custom by an infant, was made void at law, unless evidenced by deed. Feoffments by custom and other customary assurances are abolished by L. P. A., 1922, s. 128 (3). A deed is thus rendered sufficient by this s. As to when a deed will be necessary, see next s.

The passing of "possession" as well as seisin.

After 1925 conveyances will operate to pass the "possession" without entry, just as an appointment or conveyance under the Statute of Uses (see in s. 1 of that statute the words "deemed . . . in lawful . . . possession of") operated to pass the possession and not merely (as in *Copestake* v. *Hoper*, 1908, 2 Ch. 10) the seisin; a demise by bargain and sale also passed the "possession"; similarly a feoffment under seal with livery.

Mortgagee in possession.

As to demises passing the "possession" without entry: s. 149 (2), *inf.* Though a mortgage by demise or sub-demise would thus technically give the mortgagee "possession," still he would not be liable to account as a mortgagee in possession till he actually took possession. The taking of possession by a mortgagee does not convert the mortgagor's legal estate into an equitable interest: s. 95 (4), *inf.*; see also as to enlargement and vesting deeds by a mortgagee when he has acquired title by possession: ss. 88 (3), 89 (3), *inf.*

As to the meaning of "possession": s. 205 (1) (xix).

Where "possession" does not pass.

"Subject to all prior rights thereto": thus a conveyance of an equitable interest in remainder would not pass the immediate possession.

"Land": s. 205 (1) (ix), *inf.*

(2) The use of the word grant is not necessary to convey land or to create any interest therein.

As to necessity for word "grant."

The R. P. A., 1845, s. 2, enabled land in possession to be conveyed by grant; thereafter it became the practice to use that word in conveyances of freehold land, though probably not necessary, if the intent to pass the estate was clear: see *Chester* v. *Willan*, 1670, 2 Wms. Saund. 96a (F); *Shove* v. *Pincke*, 1793, 5 T. R. 124. This s. removes any question as to the necessity of so doing. The word "convey" may be used where convenient as to both freeholds and leaseholds (see ss. 205 (ii), 206, and Forms in 5th Sch. of this Act). It is not necessary to use the word "grant" except where it implies covenants under Acts of Parliament, as under s. 132 of the L. Clauses A., 1845.

The word does not imply any covenant, save where otherwise provided by statute: s. 59, *inf.*

Conveyances to be by deed.

52.—(1) All conveyances of land or of any interest therein are void for the purpose of conveying or creating a legal estate unless made by deed.

(2) This section does not apply to—

(a) assents by a personal representative;

(b) disclaimers made in accordance with section

fifty-four of the Bankruptcy Act, 1914, or not required to be evidenced in writing;

(c) surrenders by operation of law, including surrenders which may, by law, be effected without writing;

(d) leases or tenancies or other assurances not required by law to be made in writing;

(e) receipts not required by law to be under seal;

(f) vesting orders of the court or other competent authority;

(g) conveyances taking effect by operation of law.

This s. reproduces R. P. A., 1845, s. 3, with amendments.

"Legal estate": ss. 1 and 205 (1) (x); "conveyance": s. 205 (1) (ii); "land": s. 205 (1) (ix). — "Legal estate."

An assent made after 1925 to the vesting of a legal estate must be in writing signed by the personal representative, and must name the person in whose favour it is given: Ad. of E. A., 1925, s. 36 (4). — Assents, "legal estate."

That s. (s. 36 (1)) gives power for executors or administrators to assent to the passing of "real estate" which includes chattels real (*ib.*, s. 55 (1) (xix)) to a person entitled whether by devise, bequest, devolution or otherwise; the s. applies whether the testator or intestate dies before or after 1926: sub-s. (12); in other words, an assent may be made in favour of any person interested, including a purchaser from beneficiaries; but if the personal representative sells, then there should be a conveyance. — Assents as respects "real estate" not confined to devises or bequests.

The s. does not make it necessary for the assent to the passing of an equitable interest to be in writing, for in this case the curtain provisions are not required; still equity generally follows the law, and in practice most assents will be in writing. — Equitable interests in land.

The assent does not, save as respects a purchaser, prevent the personal representative from resuming possession or conveying as if he were in possession: *ib.*, s. 43.

As to assents to the passing of settled land: S. L. A., 1925, s. 8. — Vesting assents.

A memorandum of an assent to the passing of a legal estate must be endorsed on the probate or letters of administration: Ad. of E. A., 1925, s. 36 (5). — Endorsement of assents.

Assents, as respects equitable interests and personal property other than leaseholds, may still be given by parol or by implication: Wms. Exors., 9th ed. 1227 *et seq.*; 14 Hals. L. of E. 266. — Implied assents.

A disclaimer under Bkcy. A., 1914, s. 54, must be in writing signed by the trustee in bankruptcy. — Disclaimer in bankruptcy.

A person *sui juris* may disclaim by informal acts of conduct, whether the estate disclaimed be legal or equitable: *Re Birchall*, 1889, 40 Ch. D. 436, 439. — "Not required to be . . . in writing."

A married woman has power by deed, with or without the concurrence of her husband, as the case may require, to disclaim any estate or interest in land: s. 168, *inf.* She may disclaim a legacy, to which her title accrues since the M. W. P. A., 1882, even though she is restrained from anticipation: *Re Wimperis*, 1914, 1 Ch. 502. — By married woman.

In the case of trust estates the disclaimer is generally evidenced by deed; in the case of a married woman trustee it should be by deed: s. 168 (2); an omission to prove a will or a renunciation may amount to an implied disclaimer: *Re Clout & Frewer*, 1924, 2 Ch. 230. — Trust estates.

Implied surrenders.

Delivery of possession by a tenant to his landlord, and acceptance by the landlord, is a surrender by operation of law: *Gray* v. *Owen*, 1910, 1 K. B. 622; 18 Hals. L. of E. 548.

The acceptance by a lessee of a new lease, inconsistent with his existing lease, operates as a surrender of the original lease by operation of law: *Ive's Case*, 1597, 5 Co. Rep. 11b; *Fenner* v. *Blake*, 1900, 1 Q. B. 426; 18 Hals. L. of E. 549.

A mortgagor in possession or mortgagee in possession has power to accept surrenders of leases: s. 100; but the surrender is not valid unless an authorised lease is granted of the land or mines and minerals comprised in the surrender within one month after the date of the surrender, and the other conditions of s. 100 (5) are complied with.

A tenant for life may accept surrenders: S. L. A., 1925, s. 52.

As to notifying on the register the determination of any lease, &c. affecting registered land: L. R. A., 1925, s. 46.

Leases and tenancies not in writing.

Leases taking effect in possession, for a term not exceeding three years (whether or not the lessee is given power to extend the term) at the best rent, and without taking a fine, may be made by parol: s. 54 (2).

Other assurances not required to be in writing.

But a lease by a tenant for life, though not exceeding three years, must be in writing: S. L. A., 1925, s. 42 (5). This Act does not prejudicially affect the rights of any person arising out of possession of documents: s. 13; or the interests of persons in possession of land: s. 14, *sup.*

Receipts not under seal.

Receipts by building, friendly, industrial and provident societies may still operate as reconveyances or surrenders of mortgages under s. 115, *inf.*, though not under seal, if executed in accordance with the statute relating to the society: *ib.*, sub-s. (9).

Vesting orders.

As to vesting orders: s. 9, *sup.*, and note thereto.

Conveyances taking effect by operation of law.

"Conveyances taking effect by operation of law," *e.g.*, probates and letters of administration: Ad. of E. A., 1925, Pt. I.; see also s. 11 (2), *sup.*; orders of adjudication in bankruptcy or appointment of a trustee in bankruptcy: Bkcy. A., 1914, ss. 18 and 53 (1); and agreements for the extinguishment of manorial incidents: L. P. A., 1922, s. 138 (6), (12), *sup.*, so far as they operate to transfer interests in land (*e.g.*, the lord's rights to minerals and sporting rights) to the tenant; but if the lord acquires the rights of the tenant to the minerals, there must be a separate conveyance: *ib.*, 13th Sch., Pt. I., note to Form of Compensation Agreement.

Limitation Acts.

A new title is acquired by possession under the R. P. Limitation A., 1833, s. 34, the original title being extinguished: *Tichborne* v. *Weir*, 1892. 67 L. T. 735; *Nisbet* v. *Potts*, 1905, 1 Ch. at p. 399; save that in the case of registered land the original estate is held in trust for the person who has acquired title: L. R. A., 1925, s. 75; see also s. 12, *sup.*

Instruments required to be in writing.

53.—(1) Subject to the provisions hereinafter contained with respect to the creation of interests in land by parol—

(a) no interest in land can be created or disposed of except by writing signed by the person creating or conveying the same, or by his agent thereunto lawfully authorised in writing, or by will, or by operation of law;

(b) a declaration of trust respecting any land or any interest therein must be manifested and proved

by some writing signed by some person who is able to declare such trust or by his will;

(c) a disposition of an equitable interest or trust subsisting at the time of the disposition, must be in writing signed by the person disposing of the same, or by his agent thereunto lawfully authorised in writing or by will.

(2) This section does not affect the creation or operation of resulting, implied or constructive trusts.

Creation and dispositions of interests in land, declarations of trust of land, assignment of subsisting beneficial interests in real and personal property.

This s. reproduces, with amendments, the Statute of Frauds, ss. 3, 7, 8, 9. As to savings, see s. 55, *inf.*, relating to testamentary dispositions, interests created before 1926, rights under the Limitation Acts, and part performance.

"Subject to the provisions hereinafter contained": s. 54, *inf.*

"Writing": see Interp. A., 1889, s. 20.

"Parol."

"Equitable interest" in para. (c) is not confined to an equitable interest in land.

Creation of trusts of pure personalty.

Trusts of personal estate, other than chattels real, need not be declared in writing.

Resulting and implied trusts.

As to resulting trusts, see notes to *Ackroyd* v. *Smithson*, 1 Wh. & T. L. C., 8th ed. 394; and as to implied or constructive trusts, notes to *Keech* v. *Sandford*, 2 Wh. & T. L. C. 706; also Lewin, 10th ed., Chaps. VIII. to X.

54.—(1) All interests in land created by parol and not put in writing and signed by the persons so creating the same, or by their agents thereunto lawfully authorised in writing, have, notwithstanding any consideration having been given for the same, the force and effect of interests at will only.

Creation of interests in land by parol.

This sub-s. reproduces, with amendments, the Statute of Frauds, s. 1.

As to savings, see next s.

Interests at will or on sufferance.

An interest at will, *e.g.*, the interest of a purchaser who is allowed to enter into possession pending completion of the purchase: *Right* d. *Lewis* v. *Beard*, 1811, 13 East, 210; *Doe* d. *Stanway* v. *Rock*, 1842, 4 Man. & G. 30; Dart, 7th ed. 1001.

The interest of a lessee holding over after expiration of a lease for more than a year is a tenancy at will, until by payment of rent or otherwise the holding is converted into a yearly tenancy: *Doe* d. *Hollingsworth* v. *Stennett*, 1799, 2 Esp. 717; *cf. Braythwayte* v. *Hitchcock*, 1842, 10 M. & W. 494; occupation under a void demise: *Martin* v. *Smith*, 1874, 9 Ex. 50; *Clayton* v. *Blakey*, 1798, 8 T. R. 3.

A tenancy at will may be determined by either party at pleasure: Tudor, L. C., 4th ed. 4 *et seq.*; while an attempt has been made to distinguish the case where the tenant holds over without the consent or dissent of the landlord as constituting a tenancy on sufferance; in neither case is there any trustee or beneficiary, hence the interest, such as it is, is legal, save in so far as the occupier may be classified as a licensee, under a personal licence, without any interest in the land: *cf. Hurst* v. *Pictures Theatre, Ltd.*, 1915, 1 K. B. 1. As to interests uncertain in duration: *Wood* v. *Lake*, Say. 3; 13 M. & W. 848, note.

Legal interests.

Possession by mortgagor after repayment.

Formerly a mortgagor who had repaid the mortgage money without taking a reconveyance was treated as tenant at will of the mortgagee for the first year: *Sands to Thompson,* 1883, 22 Ch. D. 614; but after 1925 the mortgage term will cease when the money is repaid: s. 116, *inf.*

(2) Nothing in the foregoing provisions of this Part of this Act shall affect the creation by parol of leases taking effect in possession for a term not exceeding three years (whether or not the lessee is given power to extend the term) at the best rent which can be reasonably obtained without taking a fine.

Leases not exceeding three years by parol.

This sub-s. reproduces, with amendments, the Statute of Frauds, s. 2; see *Rollason* v. *Leon,* 1861, 7 H. & N. 73 (distinction between demise and agreement to demise); *Hand* v. *Hall,* 1877, 2 Ex. D. 355 (option to extend after the three years' term); *Hammond* v. *Farrow,* 1904, 2 K. B. 332, at 335 (lease from year to year within the s.).

"In possession."

A tenancy for three years or more, commencing from a subsequent date, must at law be made by deed: *Foster* v. *Reeves,* 1892, 2 Q. B. 255, 257, a case of an agreement for a lease; see also *Rawlins* v. *Turner,* 1699, 1 Ld. Raym. 736.

Leases by tenant for life, &c. to be in writing.

A tenant for life can agree to lease for a term not exceeding three years, though there are no S. L. A. trustees, but the agreement must be in writing: S. L. A., 1925, s. 42 (5) (ii). *Semble,* trustees for sale (s. 28, *sup.*) and personal representatives (Ad. of E. A., 1925, s. 39) should also have a written agreement.

Savings in regard to last two sections.

55. Nothing in the last two foregoing sections shall—

(a) invalidate dispositions by will; or

(b) affect any interest validly created before the commencement of this Act; or

(c) affect the right to acquire an interest in land by virtue of taking possession; or

(d) affect the operation of the law relating to part performance.

"Dispositions": 205 (1) (ii); equitable "interests": *ib.* (x).

Wills.

As to wills, see Wills Act, 1837; Wills (Soldiers and Sailors) Act, 1918; L. P. (Amend.) A., 1924, 9th Sch., para. 3.

Interests created before 1926.

As to interests created before 1926, see also s. 207 (a) and 1st Sch., Pts. I. to VIII.; S. L. A., 1925, 2nd Sch.

Possession.

As to savings of the Limitation Acts and interests of persons in possession: ss. 12, 14, *sup.*

Part performance.

As to part performance, see Fry, Specific Performance, 6th ed., Pt. III., Ch. XI.; 1 Prid., 22nd ed., Ch. IV.; *Walsh* v. *Lonsdale,* 1882, 21 Ch. D. 9; *Lowther* v. *Heaver,* 1889, 41 Ch. D. 248; *Gray* v. *Spyer,* 1922, 2 Ch. 22 (yearly option to renew); *Manchester Brewery* v. *Coombs,* 1901, 2 Ch. 608 (assignee of reversioner entitled to specific performance).

Persons taking who are not parties and as to indentures.

56.—(1) A person may take an immediate or other interest in land or other property, or the benefit of any condition, right of entry, covenant or agreement over or respecting land or other property, although he may

not be named as a party to the conveyance or other instrument.

Covenants running with the land.

This sub-s. reproduces R. P. A., 1845, s. 5, part; see *Dyson* v. *Forster*, 1909, A. C. 98, where it was doubted, as respects covenants, whether that s. must be confined to covenants running with the land, but the sub-s. now extends to property generally.

As to covenants running with the land, see ss. 76—84, *inf.*

The words "conveyance": s. 205 (1) (ii); "instrument": *ib.* (viii); and "property": *ib.* (xx) are new.

Deeds of arrangement.

See now as to binding creditors not named in a deed of arrangement: Deeds of Arr. A., 1914, s. 3; *Maskelyne* v. *Smith*, 1903, 1 K. B. 671.

Person not in existence.

A covenant cannot be entered into with a person not in existence: *Kelsey* v. *Dodd*, 1881, 52 L. J. Ch. 34, 39.

The sub-s. removes the difficulties in *Southampton* v. *Brown*, 1827, 6 B. & C. 718; *Green* v. *Horne*, 1694, 1 Salk. 197; *Berkeley* v. *Hardy*, 1826, 5 B. & C. 355.

(2) A deed between parties, to effect its objects, has the effect of an indenture though not indented or expressed to be an indenture.

Deeds between parties.

This reproduces the effect of R. P. A., 1845, s. 5, part; as to indentures, see Co. Litt. 229 a, b; Elph. Introd., 60—62; the expression "indenture" is really out of date; see also next s.

57. Any deed, whether or not being an indenture, may be described (at the commencement thereof or otherwise) as a deed simply, or as a conveyance, deed of exchange, vesting deed, trust instrument, settlement, mortgage, charge, transfer of mortgage, appointment, lease or otherwise according to the nature of the transaction intended to be effected.

Description of deeds.

This s. enables the general effect of a deed to be stated at its commencement or elsewhere. It is convenient, in practice, to anticipate the effect of a deed, by describing it, according to the nature of the transaction, at its commencement: see forms in 3rd, 4th, and 5th Schedules, *inf.*

58. Any instrument (whether executed before or after the commencement of this Act) expressed to be supplemental to a previous instrument, shall, as far as may be, be read and have effect as if the supplemental instrument contained a full recital of the previous instrument, but this section does not operate to give any right to an abstract or production of any such previous instrument, and a purchaser may accept the same evidence that the previous instrument does not affect the title as if it had merely been mentioned in the supplemental instrument.

Provisions as to supplemental instruments.

This s. reproduces C. A., 1881, s. 53, with amendments.

See s. 45 (1) and note thereto.

Practical use of this s.

The enactment in this s., though not necessary, seemed required to introduce the practice of using, instead of an endorsed document, a separate document in a similar form referring to but not reciting the previous document. Except where recitals are required the reference to the previous document need only be such as clearly to identify it. For this purpose the date and the parties, if any, with some explanation of the nature of the principal document in order to make the supplemental document intelligible, will be sufficient (see 5th Sch., Form II). If documents be made up bookwise, the supplemental deed can be attached after execution, and both together will be easily readable. A further charge cannot as a general rule be made by endorsement on the mortgage deed, which the mortgagee will not allow out of his possession, but a supplemental deed of further charge can be sent to the mortgagor for execution, and afterwards annexed by the mortgagee to his mortgage deed, without letting the latter go out of his possession.

Any document may be supplemental.

C. A., 1881, s. 53, only referred to a deed supplemental to another deed, but any document may also be made supplemental to a deed or will or to any other document; "instrument": see s. 205 (1) (viii).

See generally as to the use of supplemental deeds, 53 Sol. J. 352.

Recitals of the equitable title in deeds dealing with the legal estate to be avoided.

Until the new practice introduced by Lord Birkenhead's Acts has been in use for some time, the tendency no doubt will be, when dealing with a legal estate, to recite unnecessarily documents transferring or creating equitable interests; this is a mistake which should be carefully avoided. A distinction must, however, be drawn between reciting the equitable title, which will generally be wrong, and referring to documents relating to equitable interests, such as wills and other instruments creating trusts, for the purpose of binding the estate owner to hold his legal estate on the requisite trusts, a course which should generally be adopted.

Conditions and certain covenants not implied.

59.—(1) An exchange or other conveyance of land made by deed after the first day of October, eighteen hundred and forty-five, does not imply any condition in law.

Exchanges and partitions.

This sub-s. reproduces the provisions of R. P. A., 1845, s. 4, relating to exchanges and partitions; but after 1925 there will be no partitions, strictly so called, though trustees for sale are authorised by s. 28 (3) to allot and partition land between the persons interested in the proceeds of sale. Hence the sub-s. speaks of "other conveyance" in place of a partition deed.

Warranties under the old law.

As to the conditions implied in exchanges and partitions before that Act, see Shep. Touchstone (ed. Preston) 186; 4 Cruise Dig. tit. 32, c. 24; ss. 20, 21; Butler's note, Co. Litt. 384 a.

(2) The word "give" or "grant" does not, in a deed made after the date last aforesaid, imply any covenant in law, save where otherwise provided by statute.

"Give" or "grant" implied covenants.

This sub-s. replaces R. P. A., 1845, s. 4, part. As to the former operation of the word "give" or "grant," see Co. Litt. 384 a, note.

"Save where otherwise provided by statute": see L. Clauses A., 1845, s. 132; Queen Anne's Bounty Act, 1820 s. 22.

Abolition of technicalities in regard to conveyances and deeds.

60.—(1) A conveyance of freehold land to any person without words of limitation, or any equivalent expression, shall pass to the grantee the fee simple or other the

whole interest which the grantor had power to convey in such land, unless a contrary intention appears in the conveyance.

"Fee simple" or "heirs" not required as words of limitation.

"Contrary intention."

This sub-s. applies to conveyances and deeds executed after 1925. The sub-s. follows the lines of the Wills Act, 1837, s. 28.

Cf. the cases under the Wills Act, 1837, s. 28, as to contrary intention excluding that s.: *Gravenor* v. *Watkins,* 1871, L. R. 6 C. P. 500 (gift over); *Quarm* v. *Q.*, 1892, 1 Q. B. 184 (gift to survivor); *Pelham-Clinton* v. *Newcastle,* 1902, 1 Ch. 34, 37, affirmed, 1903, A. C. 111 (special entail); *Crumpe* v. *C.*, 1900, A. C. 127, 131 (estate tail); *Re Sanford,* 1901, 1 Ch. 939, 942 (implied power of appointment); *Re Gannon,* 1914, 1 Ir. R. 86 (gift over).

The word "heirs" to be avoided.

Though words of limitation are no longer essential the words "in fee simple" will generally be employed in deeds to show the intention of the parties and to facilitate the construction of the implied covenants for title: s. 76, *inf.*

The word "heirs" will be useless in conveyances and covenants, though an "heir" can take a beneficial interest under a settlement by purchase as opposed to descent: s. 132.

Difficulties removed.

In conveyances executed before 1926 the legal fee simple, or the equitable fee simple, under an executed trust, did not pass to the grantee without words of limitation: *Re Bostock,* 1921, 2 Ch. 469, and cases there cited. The omission of words of limitation, especially where the land was conveyed to a grantee to uses (Norton, 362—3), has probably given rise to more defective titles than any other mistake.

Right to rectification.

If the purchaser or any person deriving title under him has a right to rectification of the conveyance he would acquire the legal estate under 1st Sch., Pts. II. to VIII., *inf.*

(2) A conveyance of freehold land to a corporation sole by his corporate designation without the word "successors" shall pass to the corporation the fee simple or other the whole interest which the grantor had power to convey in such land, unless a contrary intention appears in the conveyance.

Conveyances to corporations sole.

As to the necessity for the word "successors" in a grant to a corporation sole before 1926, see Co. Litt. 9 b, 94 b; 8 Hals. L. of E., 371, 372; Norton on Deeds, 302—5. See also s. 180 (1), *inf.*; Ad. of E. A., 1925, s. 3 (5).

Words of limitation.

In conveyances to a rector or vicar of a parish, if his name is used in the operative part it will still be expedient to use the word "successors" to show that he is not to take as an individual. Similarly, conveyances to the Public Trustee should be made to "the Public Trustee," not to the individual for the time being holding the office.

Conveyances to corporations aggregate.

In a conveyance to a company words of limitation have never been necessary, the word "successors" is inappropriate and the word "assigns" is not a word of limitation. It may still be useful, though not necessary, to use the words "in fee simple," notwithstanding that under sub-s. (4), *inf.*, they take the place of "heirs" and a company cannot have heirs.

Dean and chapter.

A conveyance to a dean and chapter passes the fee simple without the word "successors": Co. Litt. 94 b; while a conveyance to a dean alone would, under the above sub-s., pass the fee simple without the word "successors": *cf.* Norton on Deeds, 302.

Vacancies; dissolution.

As to conveyances to a corporation while there is a vacancy: s. 180 (2) and note thereto; as to dissolution of a corporation: s. 181, *inf.*; T. A., 1925, ss. 36 (2) (3), 42 (ii) (c), 51 (1) (ii) (c).

Execution by corporations.

As to execution by or on behalf of corporations: s. 74, *inf.*

(3) In a voluntary conveyance a resulting trust for the grantor shall not be implied merely by reason that the property is not expressed to be conveyed for the use or benefit of the grantee.

"Conveyance": s. 205 (1) (ii).

Resulting trusts in voluntary conveyances abolished.

This sub-s. overrules on this point *Beckwith's Case*, 1589, 2 Co. Rep. 56 b, 58 b; *Armstrong* d. *Neve* v. *Wolsey*, 1755, 2 Wils. 19; see Davidson, Convg., 4th ed., Vol. 2, Pt. I., 182; Norton, Deeds, 373. After 1925 there can be no resulting "use" but only a resulting "trust," for the legal estate cannot pass by implication; only resulting trusts are saved by s. 53 (2); the Statute of Uses having been repealed the effect of a conveyance "to the use of" a voluntary grantee, to prevent a resulting "use," has been rendered nugatory, hence the need for this sub-s. Conveyances will be made simply "unto" the grantee.

(4) The foregoing provisions of this section apply only to conveyances and deeds executed after the commencement of this Act:

Provided that in a deed executed after the thirty-first day of December, eighteen hundred and eighty-one, it is sufficient—

(a) In the limitation of an estate in fee simple, to use the words "in fee simple," without the word "heirs";

(b) In the limitation of an estate tail, to use the words "in tail" without the words "heirs of the body"; and

(c) In the limitation of an estate in tail male or in tail female, to use the words "in tail male" or "in tail female," as the case requires, without the words "heirs male of the body," or "heirs female of the body."

The proviso (which applies only to deeds) in this sub-s. replaces C. A., 1881. s. 51.

Law between 1881 and 1926 still material.

The law in force after 1881 till 1926 as respects the use of the words "in fee simple" will still be material in regard to titles made between those dates save in so far as those titles may be rectified or confirmed by 1st Sch., Pts. II. to VIII., *inf.*

"In fee."

The words "in fee" alone were insufficient: *Re Ethel & Mitchells*, 1901, 1 Ch. 945. In *Re Ford & Ferguson*, 1906, 1 Ir. R. 607, the court refused to apply the words "heirs and assigns" in an interpretation clause in the operative part, *sed quære*, whether this would be followed in England.

Rectification.

As to rectifying a marriage settlement where words of limitation have been omitted: *Re Davis*, 1912, 1 Ir. R. 516. If on 1st January, 1926, a person, by rectification or otherwise, is entitled to an equitable interest capable of subsisting as a legal estate, then he may acquire the legal estate: 1st Sch., Pt. II., paras. 3 and 4; that is the material date. If, having regard to the new law, he is the person in whom the legal estate ought to be vested, it will pass to him.

Construction of executed trusts.

The words "heirs" or "fee simple" were as necessary in the case of executed trusts as in the case of legal estates: *Re Bastock*, 1921, 2 Ch. 469, and cases

there cited; *sed quære*, could not the settlement have been rectified for it was made for value.

Paras. (b) and (c) are still available for limiting entailed interests, as to which see s. 130, *inf.* — Entailed interests.

61. In all deeds, contracts, wills, orders and other instruments executed, made or coming into operation after the commencement of this Act, unless the context otherwise requires— — Construction of expressions used in deeds and other instruments.

(a) "Month" means calendar month;

(b) "Person" includes a corporation;

(c) The singular includes the plural and vice versâ;

(d) The masculine includes the feminine and vice versâ.

"Coming into operation after," *i.e.*, a will made before 1926 of a testator who dies after 1925.

The object of this s. is to shorten documents; *cf.* Interp. A., 1889, ss. 2, 3, 19.

Month is defined to mean calendar month to prevent it being construed as lunar month (28 days): *Helsham-Jones* v. *Hennen*, 1915, 84 L. J. Ch. 569. See also *Simpson* v. *Margitson*, 1847, 11 Q. B. 23; *Bruner* v. *Moore*, 1904, 1 Ch. 305; *Phipps & Co.* v. *Rogers*, 1925, 1 K. B. 14, and cases there cited; 27 Hals. L. of E. 437; Norton on Deeds, 78, 155. — "Month"

Independently of this s. a corporation may be a "respectable and responsible person" under a provision against assignment: *Willmott* v. *London Road Car Co., Ltd.*, 1910, 2 Ch. 525. — "Person."

Paras. (c) and (d) follow the practice generally adopted in company deeds. The s. would not affect the decision in a case like *Hollies* v. *Timmis*, 1921, 2 Ch. 202, depending on the existence of a number of named guarantors. — Number and gender.

62.—(1) A conveyance of land shall be deemed to include and shall by virtue of this Act operate to convey, with the land, all buildings, erections, fixtures, commons, hedges, ditches, fences, ways, waters, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, or any part thereof, or, at the time of conveyance, demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to the land or any part thereof. — General words implied in conveyances.

This sub-s. replaces C. A., 1881, s. 6 (1); see note to sub-s. (6), *inf.* — Words implied in conveyance of land.

"Conveyance": s. 205 (1) (ii); it includes an assent.

"Land": s. 205 (1) (ix).

The s. is applicable to registered land: L. R. A., 1925, ss. 19 (3), 22 (3). — Registered land.

(2) A conveyance of land, having houses or other buildings thereon, shall be deemed to include and shall by virtue of this Act operate to convey, with the land,

houses, or other buildings, all outhouses, erections, fixtures, cellars, areas, courts, courtyards, cisterns, sewers, gutters, drains, ways, passages, lights, watercourses, liberties, privileges, easements, rights, and advantages whatsoever, appertaining or reputed to appertain to the land, houses, or other buildings conveyed, or any of them, or any part thereof, or, at the time of conveyance, demised, occupied, or enjoyed with, or reputed or known as part or parcel of or appurtenant to, the land, houses, or other buildings conveyed, or any of them, or any part thereof.

This sub-s. replaces C. A., 1881, s. 6 (2). See note to sub-s. (6), *inf.*

Words implied in conveyance of land with buildings.

(3) A conveyance of a manor shall be deemed to include and shall by virtue of this Act operate to convey, with the manor, all pastures, feedings, wastes, warrens, commons, mines, minerals, quarries, furzes, trees, woods, underwoods, coppices, and the ground and soil thereof, fishings, fisheries, fowlings, courts leet, courts baron, and other courts, view of frankpledge and all that to view of frankpledge doth belong, mills, mulctures, customs, tolls, duties, reliefs, heriots, fines, sums of money, amerciaments, waifs, estrays, chief-rents, quitrents, rentscharge, rents seck, rents of assize, fee farm rents, services, royalties, jurisdictions, franchises, liberties, privileges, easements, profits, advantages, rights, emoluments, and hereditaments whatsoever, to the manor appertaining or reputed to appertain, or, at the time of conveyance, demised, occupied, or enjoyed with the same, or reputed or known as part, parcel, or member thereof.

For the purposes of this subsection the right to compensation for manorial incidents on the extinguishment thereof shall be deemed to be a right appertaining to the manor.

Words implied in conveyance of manor.

This sub-s. replaces C. A., 1881, s. 6 (3), as amended; the words "For the purposes," &c. are new; they are required on account of L. P. A., 1922, Pts. V. and VI., *sup.* "Hereditament" is defined in s. 205 (1) (ix).

Courts baron and leet.

Courts baron are unaffected by L. P. A., 1922, but the jurisdiction of courts leet in reference to certain matters is transferred to the High Court: *ib.*, 12th Sch., para. (6).

The lord's rights to minerals and sporting rights are unaffected unless included expressly in a compensation agreement: *ib.*, s. 138 (12). But reliefs, heriots, fines, quit and other manorial rents will ultimately be extinguished under Part VI. of that Act. "Services" are extinguished on 1st January, 1926: *ib.*, 12th Sch., para. (1) (b); "franchises" are saved with the mines and sporting rights: *ib.*, para. (5).

(4) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and has effect subject to the terms of the conveyance and to the provisions therein contained.

"Contrary intention."

This sub-s. replaces C. A., 1881, s. 6 (4).

See, on this sub-s., *Beddington* v. *Atlee,* 1887, 35 Ch. D. 317, 331; *Birmingham, &c. Co.* v. *Ross,* 1888, 38 *ib.* 295, 308; *Broomfield* v. *Williams,* 1897, 1 Ch. 602; *Pollard* v. *Gare,* 1901, 1 Ch. 834.

Semble, the fact that the conveyance expressly grants some right which would pass without express mention is not sufficient to show a contrary intention: *Hansford* v. *Jago,* 1921, 1 Ch. 322.

(5) This section shall not be construed as giving to any person a better title to any property, right, or thing in this section mentioned than the title which the conveyance gives to him to the land or manor expressed to be conveyed, or as conveying to him any property, right, or thing in this section mentioned, further or otherwise than as the same could have been conveyed to him by the conveying parties.

Extent of s.

This sub-s. replaces C. A., 1881, s. 6 (5). See note to sub-s. (6), *inf.;* *Quicke* v. *Chapman,* 1903, 1 Ch. 659.

(6) This section applies to conveyances made after the thirty-first day of December, eighteen hundred and eighty-one.

Effect of contracts unaltered.

This s. does not enlarge the rights of a purchaser under his contract. If the contract had been made before the Act, and the vendor would not have been bound to give the purchaser all the matters specified in the s., he can still limit his conveyance accordingly: *Re Peck & School Board for London,* 1893, 2 Ch. 315; *Re Walmsley & Shaw,* 1917, 1 Ch. 93; and see *Re Hughes & Ashley,* 1900, 2 Ch. 595.

Use of general words as to land or houses.

The object of inserting general words in a conveyance was to prevent any question as to whether a particular easement or right would or would not pass without those words. In most cases the words might be useless; still in some cases they might be required, as, for instance, to pass reputed rights and easements. As a general rule, in case of land and houses they merely express what is included in the description, or forms part and parcel of the land or houses, and the rights and easements appurtenant thereto, *i.e.*, annexed by express or implied grant, and all these pass with the land or houses: Williams, Real P., 23rd ed. 465. But where an easement had become extinct by unity of possession of the dominant and servient tenements, a conveyance before 1882 of land or a house "with all easements therewith used and enjoyed" operated as a grant *de novo* of the easement which, though at one time appurtenant, had been extinguished: *Barlow* v. *Rhodes,* 1833, 1 Cr. & M. 439, at p. 448; Gale, 10th ed. 91. So if at the date of the grant a formed road was used with one of the tenements over the other, then, whether the way existed as an easement before, or was first used during, the unity of possession, a grant of the first-mentioned tenement, "together with all ways now *used* or *enjoyed therewith,*" would have passed a right of way over the formed road: *Barkshire* v. *Grubb,*

Easements used or enjoyed with but not appurtenant to land.

1881, 18 Ch. D. 616; and, *semble*, the result would have been the same even without any general words: *Bayley* v. *G. W. Ry. Co.*, 1884, 26 Ch. D. 434, at p. 457; *Brown* v. *Alabaster*, 1887, 37 Ch. D. 490, at p. 507; *Baring* v. *Abingdon*, 1892, 2 Ch. 374, at pp. 398-9; *Head* v. *Meara*, 1912, 1 Ir. R. 262; or where the word "appurtenances" only was used: *Thomas* v. *Owen*, 1887, 20 Q. B. D. 225; *Hansford* v. *Jago*, 1921, 1 Ch. 322. Nor need there be a formed road if there are other indicia which make it apparent that the right was being openly enjoyed at the date of the conveyance: *S. C.*

Operation of conveyance after 1881.

A conveyance after 1881 will similarly operate to pass reputed easements under this Act, without any express general words: *Broomfield* v. *Williams*, 1897, 1 Ch. 602; *Pollard* v. *Gare*, 1901, 1 Ch. 834; *Westwood* v. *Heywood*, 1921, 2 Ch. 130; and see *Brazier* v. *Glasspool*, 1901, W. N. 237; also a way or other right actually used or enjoyed by the grantee or the tenant of the property at the date of the conveyance, though used only by permission of the grantor: *International, &c. Co.* v. *Hobbs*, 1903, 2 Ch. 165; *Lewis* v. *Meredith*, 1913, 1 Ch. 571; *Long* v. *Gowlett*, 1923, 2 Ch. 177; but not an easement which the grantor has no power to grant expressly: *Quicke* v. *Chapman*, 1903, 1 Ch. 659; nor a right of way that is not obvious and apparent: *Titchmarsh* v. *Royston Water Co.*, 1889, 81 L. T. 673; *Long* v. *Gowlett, sup.*; nor a right to light over adjoining land which the grantor has already contracted to sell: *Beddington* v. *Atlee*, 1887, 35 Ch. D. 317; and see *Davies* v. *Thomas*, 1899, W. N. 244; nor a right to light to an extent inconsistent with the intention to be implied from the circumstances existing at the time of the grant, and known to the grantee: *Birmingham, &c. Co.* v. *Ross*, 1888, 38 Ch. D. 295; *Godwin* v. *Schweppes, Ltd.*, 1902, 1 Ch. 926; and see *Browne* v. *Flower*, 1911, 1 Ch. 219, at p. 225; nor will a conveyance after 1881 entitle the grantee to have a precarious right unknown to the law continued for his benefit: *Burrows* v. *Lang*, 1901, 2 Ch. 502.

Privileges, rights and advantages.

The s. extends to a profit *à prendre in alieno solo*: *White* v. *Williams*, 1922, 1 K. B. 727.

The rights which pass or are created under this s. must be distinguished from rights or obligations arising under the doctrine that no one can derogate from his own grant; under this doctrine rights or obligations will sometimes be implied which would be unknown to the law as easements: *S. C.*; and see *Cable* v. *Bryant*, 1908, 1 Ch. 259; *Harmer* v. *Jumbil, &c., Ltd.*, 1921, 1 Ch. 200; also General Conditions of 1925 in Appendix No. III., Vol. II.

Extent of right.

In the case of implied grants the extent of the right depends upon the user at the time of the grant: *Brown* v. *Alabaster, sup.*, p. 507; *Phillips* v. *Low*, 1892, 1 Ch. 47, 51. Where the nature of this cannot be proved, the subsequent user of the right is the only satisfactory guide to the extent thereof: *Milner's Safe Co., Ltd.* v. *G. N. & City Rly.*, 1907, 1 Ch. 208.

Devise.

Where rights of way would be implied on a grant, they would be implied on a devise: *S. C.* and cases there cited; *Schwann* v. *Cotton*, 1916, 2 Ch. 459.

In an Irish case the question whether this s. applies to conveyances by the Land Judge was left open: *Head* v. *Meara*, 1912, 1 Ir. R. 262.

General words as to manors.

The general words used in a conveyance of a manor either (1) express what is included in the description as parcel of the manor: see Shep. Touch. 92; or (2) they are royal franchises, which, if they are appurtenant to the manor, pass without express words, but not otherwise: see *Morris* v. *Dimes*, 1834, 1 A. & E. 654. For definition of manor, see s. 205 (1) (ix).

Mines and minerals.

Mines and minerals pass under a conveyance of land without being expressly mentioned, except in copyhold or customary assurances made before 1926 and except in conveyances to railway and waterworks companies, from which latter they are excepted unless expressly mentioned: see the Railway Clauses Act, 1845, s. 77, and the Waterworks Clauses Act, 1847, s. 18. On an enfranchisement of copyholds by way of conveyance of the fee simple the mines and

minerals passed unless excepted, but on an enfranchisement under the Cop. A.'s. they did not pass unless expressly mentioned. All copyholds are now enfranchised under L. P. A., 1922, Pt. V., but the lord's rights to minerals are preserved: *ib.*, 12th Sch., para. 5. These are therefore omitted from the general words which by this s. are made applicable to land and houses, but are included in the general words applicable to manors, as they may in some cases have become severed from the manor, and once severed could not be reunited to it as they might be to the surface of land when both become vested in the same owner. It may be a question whether an enfranchisement of copyholds before 1926 by conveyance of the fee simple reserving the minerals would not have operated as a severance.

All estate clause implied.

63.—(1) Every conveyance is effectual to pass all the estate, right, title, interest, claim, and demand which the conveying parties respectively have, in, to, or on the property conveyed, or expressed or intended so to be, or which they respectively have power to convey in, to, or on the same.

(2) This section applies only if and as far as a contrary intention is not expressed in the conveyance, and has effect subject to the terms of the conveyance and to the provisions therein contained.

(3) This section applies to conveyances made after the thirty-first day of December, eighteen hundred and eighty-one.

This s. replaces C. A., 1881, s. 63.

"All estate" clause.

The object of this s. is to abolish the "all estate" clause, as to which see Norton on Deeds, p. 271 *et seq.*; *Price* v. *John*, 1905, 1 Ch. 744. The s. does not say that every conveyance shall be deemed to contain this clause, which might be inconsistent with the terms of conveyance, as the word "conveyance" includes "lease": see s. 205 (1) (ii). Even with an express "all estate" clause a lease could not pass the fee because the premises would be controlled by the habendum: Co. Litt. 183 a; *Buckler's Case*, 1597, 2 Co. 55; Shep. Touch. 113.

For an example of the effect of this s. where the grantor who purported to convey the fee had only an equitable leasehold interest, see *Thellusson* v. *Liddard*, 1900, 2 Ch. 635.

This s., with s. 205 (1) (ii), which defines "conveyance" and "convey," does not make a deed in which the operative word is "convey" into a deed of appointment; but on the particular language of the deed the word "convey" may be construed as "appoint": *Hanbury* v. *Bateman*, 1920, 1 Ch. 313, 319, 320.

Production and safe custody of documents.

64.—(1) Where a person retains possession of documents, and gives to another an acknowledgment in writing of the right of that other to production of those documents, and to delivery of copies thereof (in this section called an acknowledgment), that acknowledgment shall have effect as in this section provided.

Acknowledgment.

This sub-s. replaces C. A., 1881, s. 9 (1).

See generally on this s., note to sub-s. (14), *inf.*

(2) An acknowledgment shall bind the documents to which it relates in the possession or under the control of the person who retains them, and in the possession or under the control of every other person having possession or control thereof from time to time, but shall bind each individual possessor or person as long only as he has possession or control thereof; and every person so having possession or control from time to time shall be bound specifically to perform the obligations imposed under this section by an acknowledgment, unless prevented from so doing by fire or other inevitable accident.

Effect.

This sub-s. replaces C. A., 1881, s. 9 (2).

(3) The obligations imposed under this section by an acknowledgment are to be performed from time to time at the request in writing of the person to whom an acknowledgment is given, or of any person, not being a lessee at a rent, having or claiming any estate, interest, or right through or under that person, or otherwise becoming through or under that person interested in or affected by the terms of any document to which the acknowledgment relates.

Running with land.

This sub-s. replaces C. A., 1881, s. 9 (3).

(4) The obligations imposed under this section by an acknowledgment are—

(i) An obligation to produce the documents or any of them at all reasonable times for the purpose of inspection, and of comparison with abstracts or copies thereof, by the person entitled to request production or by any person by him authorised in writing; and

(ii) An obligation to produce the documents or any of them at any trial, hearing, or examination in any court, or in the execution of any commission, or elsewhere in the United Kingdom, on any occasion on which production may properly be required, for proving or supporting the title or claim of the person entitled to request production, or for any other purpose relative to that title or claim; and

(iii) An obligation to deliver to the person entitled to request the same true copies or extracts,

attested or unattested, of or from the documents or any of them.

This sub-s. replaces C. A., 1881, s. 9 (4). The "United Kingdom" in this Act means Great Britain and Northern Ireland: s. 205 (1) (xxx). Obligations.

(5) All costs and expenses of or incidental to the specific performance of any obligation imposed under this section by an acknowledgment shall be paid by the person requesting performance.

This sub-s. replaces C. A., 1881, s. 9 (5). Costs.

It is conceived that where a mortgagor gives an acknowledgment to his mortgagee, it is unnecessary to vary (under sub-s. 13, *inf.*) the provision made by this sub-s. as to costs and expenses, by expressly giving them to the mortgagee, or adding them to his security. The mortgagee, though liable, in case the deeds get into other hands, to pay the costs and expenses in the first instance, would be entitled to add them to his security as against the mortgaged property, on general principles, if the specific performance of the obligation was required for the purposes of his security: compare *N. P. B. of Eng.* v. *Games*, 1885, 31 Ch. D. 582; *Wales* v. *Carr*, 1902, 1 Ch. 860; and see *contrà*, K. & E., 11th ed., vol. ii, p. 80, note (*e*). Mortgagor and mortgagee.

(6) An acknowledgment shall not confer any right to damages for loss or destruction of, or injury to, the documents to which it relates, from whatever cause arising.

This sub-s. expressly excludes all liability to damages for loss or destruction where an acknowledgment only is given. The liability for damages arises only upon an undertaking under sub-s. 9. No liability to damages where acknowledgment only given.

(7) Any person claiming to be entitled to the benefit of an acknowledgment may apply to the court for an order directing the production of the documents to which it relates, or any of them, or the delivery of copies of or extracts from those documents or any of them to him, or some person on his behalf; and the court may, if it thinks fit, order production, or production and delivery, accordingly, and may give directions respecting the time, place, terms, and mode of production or delivery, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

This sub-s. replaces C. A., 1881, s. 9 (7). Powers of court.

(8) An acknowledgment shall by virtue of this Act satisfy any liability to give a covenant for production and delivery of copies of or extracts from documents.

Where by general law, and in the absence of special contract, a person would be bound to give a covenant for production and delivery of copies (as Acknowledgment substi-

tuted for covenant to produce.

to which see Sug. V. & P., 14th ed., ch. xi, s. 6, and *Cooper* v. *Emery*, 1844, 1 Ph. 388), sub-s. 8 enables him to give an acknowledgment in place of the covenant, but does not compel him to do so. He still has the option of giving a covenant, an option not likely to be exercised, as the covenant creates a more onerous liability. This s. applies only to liabilities respecting documents incurred after 1881: see sub-s. 14. See also General Conditions of 1925, Appendix No. III., Vol. II.

(9) Where a person retains possession of documents and gives to another an undertaking in writing for safe custody thereof, that undertaking shall impose on the person giving it, and on every person having possession or control of the documents from time to time, but on each individual possessor or person as long only as he has possession or control thereof, an obligation to keep the documents safe, whole, uncancelled, and undefaced, unless prevented from so doing by fire or other inevitable accident.

Liability under undertaking is on possessor only.

This sub-s., as compared with the ordinary covenant for production, operates as a relief to the person bound to produce. It makes him liable for damages only while the documents are in his possession. On the other hand, it imposes an additional liability on any person afterwards acquiring possession of the documents, making him liable in damages for loss or destruction, a liability not necessarily devolving on him under the ordinary covenant merely by reason of his receiving the documents from a person who had covenanted for safe custody.

(10) Any person claiming to be entitled to the benefit of such an undertaking may apply to the court to assess damages for any loss or destruction of, or injury to, the documents or any of them, and the court may, if it thinks fit, direct an inquiry respecting the amount of damages, and order payment thereof by the person liable, and may make such order as it thinks fit respecting the costs of the application, or any other matter connected with the application.

Application under undertaking for damages, how made.

An application to the court under this sub-s. or under sub-s. 7 should be by summons: see s. 203 (2) (a).

Damages for loss of deeds.

As to the question of damages, see *Hornby* v. *Matcham*, 1848, 16 Sim. 325, and *Brown* v. *Sewell*, 1853, 11 Ha. 49. In *James* v. *Rumsey*, 1879, 11 Ch. D. 398, the mortgagor was held entitled to an indemnity, but not to compensation.

(11) An undertaking for safe custody of documents shall by virtue of this Act satisfy any liability to give a covenant for safe custody of documents.

Substituted liability.

This sub-s. replaces C. A., 1881, s. 9 (11).
See note to sub-s. 8.

(12) The rights conferred by an acknowledgment or an undertaking under this section shall be in addition to

all such other rights relative to the production, or inspection, or the obtaining of copies of documents, as are not, by virtue of this Act, satisfied by the giving of the acknowledgment or undertaking, and shall have effect subject to the terms of the acknowledgment or undertaking, and to any provisions therein contained.

This sub-s. replaces C. A., 1881, s. 9 (12).

Power to vary.

(13) This section applies only if and as far as a contrary intention is not expressed in the acknowledgment or undertaking.

This sub-s. replaces C. A., 1881, s. 9 (13).

Contrary intention.

(14) This section applies to an acknowledgment or undertaking given, or a liability respecting documents incurred, after the thirty-first day of December, eighteen hundred and eighty-one.

Legal right to production assimilated to the equitable right.

This s. removes certain difficulties as to covenants for production running with the land, and makes the legal right to production co-extensive with the equitable right, as to which, see *Fain* v. *Ayers*, 1826, 2 Sim. & St. 533; Dart, 7th ed., ch. ix., s. 2; ch. xii., s. 6. Also it removes the personal liability of the original covenantor after he has parted with the documents, and transfers that obligation to each subsequent possessor, but for the period only of his possession. This personal liability has sometimes compelled a covenantor to retain documents after he had ceased to be interested in any land affected by them, or else to incur the expense of obtaining, and of procuring the covenantee to accept, a substituted covenant. A person retaining documents is now enabled to give (1) an acknowledgment of the right of production, and (2) an undertaking for safe custody, together or separately. The first, unlike a covenant to the same effect, may safely be given by a trustee or mortgagee. He can always produce the documents while he has possession of them, and he ceases to be liable after he has parted with them. He should only give the acknowledgment and not the undertaking: see note, *inf.* An ordinary vendor will be liable to give both in the absence of special contract. As to the right of the vendor to retain documents, see s. 45 (9).

Trustees should not give undertaking.

The covenant for production of documents intended to be superseded by this s. imposed two obligations: (1) an obligation to produce, (2) an obligation to keep safe. The first could be enforced by specific performance, but the remedy on the second was damages only. The old practice was that a trustee selling did not give any covenant. Later it became customary for him to give a covenant limited so as to bind himself personally while having possession of the documents, and so as to bind the same, so far as may be, in the hands of other persons, "but so as not to create any further liability," or "so as not to create any liability for damages." With this limitation inserted it is conceived that the part of the covenant as to safe keeping should have been omitted, the limitation of liability being repugnant and void: *Williams* v. *Hathaway*, 1877, 6 Ch. D. 544; *Watling* v. *Lewis*, 1911, 1 Ch. 414; but see *Re Robinson*, 1912, 1 Ch. 717; this, however, does not seem always to have been attended to in the precedent books. However this may be, the general rule is that a trustee does not covenant except for his own acts, and ought not to be asked to guarantee the safety of documents which might be lost without his personal neglect, as,

for instance, by his solicitor on a journey, when properly removing them. In this view trustees ought only to give an acknowledgment under this s. and not an undertaking. If they give an undertaking, any damages incurred could not, it is apprehended, in the absence of special provision, be recouped to them out of the part of the trust estate retained: see, however, on the question whether trustees should give the undertaking as well as the acknowledgment, 37 Sol. J., pp. 4, 73, 78. But on the purchase of an estate with deeds bound by an undertaking, the liability would be one attached by law to the estate, and in a proper case the trustees would be entitled to be recouped any loss. The same principle applies to mortgagees.

The old practice was to take the covenant for production of documents by a separate deed, and not to include it in the conveyance. On subsequent dealings it was kept off the abstract, and no opportunity was given for making requisitions as to the documents mentioned in the covenant.

Acknowledgment or undertaking may be included in the conveyance.

Under s. 45 (1), *sup.*, when a conveyance becomes a root of title any requisition as to prior documents is precluded, and there is therefore no special reason for giving an acknowledgment and undertaking by a separate writing unless the schedule of documents would make the conveyance inconveniently long.

Stamp on an acknowledgment or undertaking.

A separate writing, under hand only, should bear a sixpenny agreement stamp. Though not a document clearly included in the Stamp Act, it might be held to be in effect an agreement.

Expense, by whom to be borne.

An acknowledgment and undertaking being substituted for a covenant, the expense will be borne by the person who would pay for the covenant (see s. 45 (8), *sup.*), but, besides the stamp, the expense will in any case be no more than the mere cost of making out a schedule of documents.

No indemnity required on delivery over.

The liability of a person giving an acknowledgment or undertaking ceases when the documents are delivered over, and attaches to the person receiving them. Therefore no indemnity need be taken on delivery over, but it is conceived that they must be properly delivered over, that is to say, to a person having an interest in the property to which they relate.

S. only applies to persons actually having possession of documents.

The acknowledgment or undertaking must be given by a person who retains the documents, *i.e.*, who actually has possession of them. Therefore where, as sometimes happens on a sale of property in mortgage, the mortgagor and mortgagee are required to place themselves under an obligation for production, the obligation by the mortgagee being limited to the period during which he has possession, he alone can give an acknowledgment. The mortgagor does not retain the deeds, and his obligation is not to produce, but to procure production, and, if required, must be provided for by covenant to give an undertaking when the deeds are delivered to him: *Re Pursell & Deakin*, 1893, W. N. 152. It is wrong to make the mortgagor in such a case give an undertaking for safe custody. His undertaking has no operation under this Act. It operates as an unqualified ordinary contract for safe custody, and renders him liable for loss or destruction of the deeds after he has ceased to have any interest in them, and the person to whom it is given has not the benefit of sub-s. (10) of this s.

Production by mortgagee.

Under s. 96, *inf.*, a mortgagee, under a mortgage made after 1881, is bound to produce the deeds in his custody or power to any person entitled to redeem, and to permit him to take copies or abstracts.

Reservation of legal estates.

65.—(1) A reservation of a legal estate shall operate at law without any execution of the conveyance by the grantee of the legal estate out of which the reservation is made, or any regrant by him, so as to create the legal estate reserved, and so as to vest the same in possession

in the person (whether being the grantor or not) for whose benefit the reservation is made.

Reservation by way of use.

Before 1926 a reservation could be made under C. A., 1881, s. 62, amending the Statute of Uses, or under that statute; but a reservation by way of "use" is no longer possible.

"Possession."

"Legal estate": see ss. 1, 205 (1) (x); "possession": s. 205 (1) (xix); see also s. 51, *sup.*, and note thereto.

"Conveyance" includes lease and every other assurance of property: s. 205 (1) (ii); hence this s. applies to leasehold land as well as freehold land.

Reservations before 1926.

A reservation, otherwise than by way of use, in a deed made before 1926, but not executed by the grantee, was not effectual at law; but if executed by the grantee, it operated as a regrant, which might be to a stranger: *Wickham* v. *Hawker*, 1840, 7 M. & W. 63; Norton, Deeds, 247. Although the deed was not executed by the grantee, it was evidence of an agreement by him to make the regrant: *Thellusson* v. *Liddard*, 1900, 2 Ch. 635, 645; and see *May* v. *Belleville*, 1905, 2 Ch. 605.

Execution by grantee after 1925 unnecessary.

This sub-s. avoids the necessity for any execution by the grantee: see 5th Sch., *inf.*, Forms 5 and 6; also General Conditions of 1925, Appendix No. III., Vol. II.

(2) A conveyance of a legal estate expressed to be made subject to another legal estate not in existence immediately before the date of the conveyance, shall operate as a reservation, unless a contrary intention appears.

Conveyance subject to legal estate.

Compare *Thellusson* v. *Liddard*, 1900, 2 Ch. 635, 645 (conveyance subject to a non-existing lease).

Informal reservations.

The object of this sub-s. is not to supply a new form of a reservation of a legal estate to be created *de novo*, but to enable legal effect to be given to the intention of the parties, notwithstanding the use of a defective form.

Voidable lease.

Thus to prevent the confirmation of a voidable lease the conveyance should be made subject thereto "if and so far as subsisting"; this would show a "contrary intention."

(3) This section applies only to reservations made after the commencement of this Act.

The s. was rendered necessary by the repeal of the Statute of Uses and C. A., 1881, s. 62.

Confirmation of past transactions.

66.—(1) A deed containing a declaration by the estate owner that his estate shall go and devolve in such a manner as may be requisite for confirming any interests intended to affect his estate and capable under this Act of subsisting as legal estates which, at some prior date, were expressed to have been transferred or created, and any dealings therewith which would have been legal if those interests had been legally and validly transferred or created, shall, to the extent of the estate of the estate owner, but without prejudice to the restrictions

imposed by this Act in the case of mortgages, operate to give legal effect to the interests so expressed to have been transferred or created and to the subsequent dealings aforesaid.

Deed for giving effect to interests capable of subsisting as legal estates.

For the statutory form of deed, see 5th Sch., Form No. 7, and note thereto.

"Estate owner": see ss. 1, 205 (1) (v); the s. applies to leasehold land as well as freehold. The express enactment to this effect, L. P. A., 1922, s. 25 (2), is not replaced.

"Capable of subsisting as legal estates": see ss. 1, 205 (1) (x).

"Restrictions imposed by this Act in the case of mortgages": mortgagees can only acquire legal terms of years or charges by way of legal mortgage: ss. 85 *et seq.*, and 1st Sch., Pts. VII. and VIII.

Substitute for conveyance to uses.

This s. is necessary in order to provide a substitute for a conveyance to uses which, as respects freeholds, would have been employed before 1926 to confirm past titles.

This special form of deed enables concurrent legal estates in the same land to be created, *e.g.*, a lease to A., a perpetual rentcharge to B., an easement to C., while leaving the fee simple in the person making the declaration subject to the legal estates so created.

(2) The powers conferred by this section may be exercised by a tenant for life or statutory owner, trustee for sale or a personal representative (being in each case an estate owner) as well as by an absolute owner, but if exercised by any person, other than an absolute owner, only with the leave of the court.

Leave of court.

Probably in settlements and in dispositions on trust for sale power will be given to act under this s. without the leave of the court.

As to the "court" and procedure under this sub-s., see s. 203, *inf.*

By estate owner, not being absolute owner.

As to legal estates required to be created by an estate owner in order to give effect to equitable interests, see s. 3, *sup.*; S. L. A., 1925, s. 16; in such cases the trustee is bound to convey, the leave of the court is not then required under this s., the object of which is to enable defective titles to be confirmed without the aid of a private Act of Parliament, not to interfere with the duty of a trustee to execute a conveyance.

Cases where leave of court not required.

The s. is not required to enable a conveyance to be executed, but to enable past transactions to be confirmed which for some technical reason are not good in law.

(3) This section applies only to deeds containing such a declaration as aforesaid if executed after the commencement of this Act.

Extent of s.

As respects freeholds, this s. was not required before 1926, but it will now apply also to leaseholds and enfranchised land.

Receipt in deed sufficient.

67.—(1) A receipt for consideration money or securities in the body of a deed shall be a sufficient discharge for the same to the person paying or delivering the same, without any further receipt for the same being indorsed on the deed.

(2) This section applies to deeds executed after the thirty-first day of December, eighteen hundred and eighty-one.

This s. replaces C. A., 1881, s. 54. See note to next s.; see also s. 52 (2) (e).

As to receipts by S. L. A. trustees, see S. L. A., 1925, s. 95; and as to receipts by trustees generally, T. A., 1925, s. 14.

Receipt in deed or indorsed evidence.

68.—(1) A receipt for consideration money or other consideration in the body of a deed or indorsed thereon shall, in favour of a subsequent purchaser, not having notice that the money or other consideration thereby acknowledged to be received was not in fact paid or given, wholly or in part, be sufficient evidence of the payment or giving of the whole amount thereof.

(2) This section applies to deeds executed after the thirty-first day of December, eighteen hundred and eighty-one.

This s. replaces C. A., 1881, s. 55.

"Purchaser": s. 205 (1) (xxi).

Effect of receipt in body of deed.

This and the preceding s. make the receipt in the body of a deed executed after 1881 sufficient evidence of payment, and a purchaser is not put upon enquiry by the absence of an endorsed receipt: *Lloyd's Bank* v. *Bullock*, 1896, 2 Ch. 192; *Bateman* v. *Hunt*, 1904, 2 K. B. 530.

Conflict of equities.

If a vendor executes a conveyance containing a proper receipt for the purchase-money, and hands such conveyance to the purchaser, who subsequently deposits it with an equitable mortgagee without notice of the vendor's lien, the equity of such mortgagee is preferred to the vendor's lien for unpaid purchase-money: *Rice* v. *Rice*, 1853, 2 Drew. 73; and where the vendor was a trustee with power to sell, his *cestuis que trust* were in no better position: *Lloyd's Bank* v. *Bullock, sup.* In *Capell* v. *Winter*, 1907, 2 Ch. 376, where the sale by the trustee was fictitious, the equity of the *cestuis que trust* was not postponed, on the ground that the principle underlying the decisions in *Rice* v. *Rice* and *Lloyd's Bank* v. *Bullock* in no way depended on estoppel, but *Rice* v. *Rice* was treated in *Rimmer* v. *Webster*, 1902, 2 Ch. 163, 173, as a case of pure estoppel, and see also *Powell* v. *Browne*, 1907, 97 L. T. 854.

Statutory form of transfer.

In *Rimmer* v. *Webster, sup.*, the principle of estoppel was applied to the statement that the consideration money has been paid contained in a transfer made in a form prescribed by statute, without any express receipt clause.

The mere fact that the person giving the receipt and the person to whom it is given stand in the relation of client and solicitor is not enough to put a purchaser upon enquiry: *Saunders* v. *Kent*, 1885, W. N. 147; *Powell* v. *Browne, sup.*

Recital of payment.

A recital of a payment has always been held to bind the parties without a separate receipt.

What is a sufficient receipt.

There must be something more than a general statement that consideration has been given; specific sums or items must be mentioned to give a receipt for consideration its statutory effect under this s.: see *Renner* v. *Tolley*, 1893, W. N. 90 (but was any receipt necessary? the money was in the lease stated "to have been expended," and was not paid to the lessor. He could not acknowledge the receipt).

Receipt in deed or indorsed authority for payment to solicitor.

69.—(1) Where a solicitor produces a deed, having in the body thereof or indorsed thereon a receipt for consideration money or other consideration, the deed being executed, or the indorsed receipt being signed, by the person entitled to give a receipt for that consideration, the deed shall be a sufficient authority to the person liable to pay or give the same for his paying or giving the same to the solicitor, without the solicitor producing any separate or other direction or authority in that behalf from the person who executed or signed the deed or receipt.

(2) This section applies whether the consideration was paid or given before or after the commencement of this Act.

This s. replaces C. A., 1881, s. 56.

This s. met the dictum of L.J. Turner in *Viney* v. *Chaplin*, 1858, 2 De G. & J. 468, 482, making an additional document necessary where the purchase-money was to be paid to the vendor's solicitor, namely, an express authority to pay to him: see also *Ex parte Swinbanks*, 1879, 11 Ch. D. 525.

Practice not altered.

It makes no alteration in the mode of procedure on the completion of a purchase, but only gives an additional security to a purchaser. The absence of a written authority to a solicitor to receive consideration money was never relied on in practice as preventing payment. Each person entitled to receive acted as if the execution by him of the deed and indorsed receipt enabled the producer of the deed so executed to receive without further authority. This was supposed to be the law before *Viney* v. *Chaplin*, and is now the law in reality. In practice it is perfectly well known to all parties who is the solicitor acting for each person, and entitled to receive; in fact, on a sale, the vendor's solicitor is usually named in the conditions or contract; the payment will be made to him, and a purchaser knowingly making payment to the wrong person would not be absolved by this s. If any one of several persons entitled to receive chooses not to let the deed out of his possession, when executed by him, his only course is to attend on completion.

An authority to a solicitor to receive money implied by his holding the deed containing a receipt is determined by the death of the person who gave the authority: *Newton* v. *Metropolitan Ry.*, 1861, 10 W. R. 102.

Ss. 67 and 69 render unnecessary the indorsed receipt and the separate authority to pay, and prevent the difficulty and delay sometimes caused by the omission to sign an indorsed receipt. The one receipt now required may be either in the body of the deed or indorsed.

Cheques.

As to payment by cheque, see *Papè* v. *Westacott*, 1894, 1 Q. B. 272; *Blumberg* v. *Life Interests, &c. Corpn.*, 1897, 1 Ch. 171; 1898, 1 Ch. 27; *Johnston* v. *Boyes*, 1899, 2 Ch. 73.

Trustees.

This s. has been extended to the case of trustees (see T. A., 1925, s. 23 (3) (a)), who were held not to be within it unless they had power to authorise payment to their solicitor: *Re Bellamy & Metropolitan B. of W.*, 1883, 24 Ch. D. 387; *Re Flower & Same*, 1884, 27 *ib.*, 592.

Solicitor must act for person receiving.

The solicitor producing the deed must be acting for the person signing the receipt therein, and must produce the deed and not merely have it in his possession: *Day* v. *Woolwich, &c. Society*, 1888, 40 Ch. D. 491; approved in *Re Hetling & Merton*, 1893, 3 Ch. 269; but see *King* v. *Smith*, 1900, 2 Ch. 425, 432.

Where trustees are dividing trust funds and paying to the beneficiaries their shares, it seems doubtful whether this s. authorises payment of a share to a solicitor producing a deed of release. The trustees are bound to pay, and the payment can scarcely be taken as the consideration for the release which is consequent on due payment being or having been already made. Whether s. applies to release.

70.—(1) A release from a rentcharge of part of the land charged therewith does not extinguish the whole rentcharge, but operates only to bar the right to recover any part of the rentcharge out of the land released, without prejudice to the rights of any persons interested in the land remaining unreleased, and not concurring in or confirming the release. Partial release of security from rentcharge.

(2) This section applies to releases made after the twelfth day of August, eighteen hundred and fifty-nine.

This s. replaces L. P. (Amend.) A., 1859, s. 10; such a release made before the 13th August, 1859, extinguished the whole rent in respect of all the lands charged: 18 Vin. Abr. 504, tit. Rent (Ba).

If, in a release of part of the land charged, the parties interested in the remaining part do not concur, such remaining part will become subject to an apportioned part only of the whole rentcharge: *Booth* v. *Smith*, 1884, 14 Q. B. D. 318. Implied partial release.

If, however, the persons interested in the remaining part concur in or confirm the release, it may be construed as rendering the remaining part liable to the whole of the rentcharge, without apportionment: *Price* v. *John*, 1905, 1 Ch. 744. When remaining land is liable for whole.

As to apportionment of rentcharges, see ss. 190—192, *inf.*; and as to indemnities against rents, s. 189, *inf.*; General Conditions of 1925, cl. 13. Apportionment.

As to implied extinguishment of rentcharges by merger or otherwise, on the chargee becoming owner of the land or any part thereof, see Co. Litt. 147 a, b; *Freeman* v. *Edwards*, 1848, 2 Exch. 732; *Swinfen* v. *S.* (No. 3), 1860, 29 Beav. 199; *Re Betton*, 1871, L. R. 12 Eq. 553. Merger of rentcharges.

71.—(1) A release from a judgment (including any writ or order imposing a charge) of part of any land charged therewith does not affect the validity of the judgment as respects any land not specifically released. Release of part of land affected from a judgment.

(2) This section operates without prejudice to the rights of any persons interested in the property remaining unreleased and not concurring in or confirming the release.

(3) This section applies to releases made after the twelfth day of August, eighteen hundred and fifty-nine.

This s. replaces L. P. (Amend.) A., 1859, s. 11; *cf.* s. 70, *sup.*

A release made before 13th August, 1859, from a judgment of part of the land charged therewith extinguished the charge: *Handcock* v. *H.*, 1865, 1 Ir. Ch. R. 444; and as to a conveyance to a tenant by *elegit* of part of the lands extended, see *Hele* v. *Lord Bexley*, 1853, 17 Beav. 14. Judgments.

In a vendor's action for specific performance, where judgment creditors of the defaulting purchaser refuse to withdraw their adverse claims, an order may be made against them freeing the land from the creditors' interests: *Moscrop* v. *Sandeman*, 1863, 9 Jur. N. S. 1146.

As to registration of writs and orders for enforcing judgments, see L. C. A., 1925, s. 6; as to equitable charges under judgments: s. 195, *inf.*

Conveyances by a person to himself, &c.

72.—(1) In conveyances made after the twelfth day of August, eighteen hundred and fifty-nine, personal property, including chattels real, may be conveyed by a person to himself jointly with another person by the like means by which it might be conveyed by him to another person.

This sub-s. replaces L. P. (Amend.) A., 1859, s. 21. That Act did not extend to things in action, which could not then be assigned at law: see now s. 136, and next sub-s.

(2) In conveyances made after the thirty-first day of December, eighteen hundred and eighty-one, freehold land, or a thing in action, may be conveyed by a person to himself jointly with another person, by the like means by which it might be conveyed by him to another person; and may, in like manner, be conveyed by a husband to his wife, and by a wife to her husband, alone or jointly with another person.

This sub-s. replaces C. A., 1881, s. 50.

The first part of this sub-s. and sub-s. (1) are only intended to apply to a conveyance in joint tenancy, as in the ordinary case of the appointment of a new trustee. In cases where the first part of s. 50 was made use of before 1926 it had to be provided that the statutory covenants for title should have effect as if the property had been conveyed by the grantor to the other persons or person alone, for a covenant by one with himself and another or others before this Act was void; but this has been remedied by s. 82, *inf.* See cases cited in note to s. 76 (1), *inf.* "Conveyances by one to himself and another."

"Conveyance" includes a lease: see s. 205 (1) (ii); *Napier* v. *Williams*, 1911, 1 Ch. 361, 367.

Assignment of leaseholds, &c. by husband to wife and *vice versâ*.

Till the M. W. P. A. an assignment of leaseholds, or things in possession by a husband to a wife was inoperative, nor, if voluntary, would it take effect as a declaration of trust: *Re Breton's Estate*, 1881, 17 Ch. D. 416. Now by the M. W. P. A. a married woman is capable of acquiring and disposing of any real or personal property, as her separate property, in the same manner as if she were a *feme sole*, hence is capable of acquiring it from, or conveying it to, her husband: *Ramsay* v. *Margrett*, 1894, 2 Q. B. 18.

(3) After the commencement of this Act a person may convey land to or vest land in himself.

Conveyance, &c. to self.

This sub-s. is new. Before 1926, a conveyance to uses or a regrant was necessary.

For an example where land is to be vested by the declarants in themselves, see S. L. A., 1925, 2nd Sch., para. 1 (2).

Again, conveyances of settled land may be made to the tenant for life by the trustees of the settlement in his name and on his behalf: S. L. A., 1925, s. 68. Settled land.

Disentailing assurances of land will operate only in equity: S. L. A., 1925, s. 18 (1) (a), hence a grantee will still be employed to comply with F. & R. A., 1833. Disentailing assurances.

(4) Two or more persons (whether or not being trustees or personal representatives) may convey, and shall be deemed always to have been capable of conveying, any property vested in them to any one or more of themselves in like manner as they could have conveyed such property to a third party; provided that if the persons in whose favour the conveyance is made are, by reason of any fiduciary relationship or otherwise, precluded from validly carrying out the transaction, the conveyance shall be liable to be set aside.

Before 1926 the transaction would have been effected by a release of the undivided shares of the owners other than the grantee, or a conveyance to a grantee to uses. Conveyance by several to one of their number.

As to the covenants for title in cases under this s., see s. 82, *inf.*

Trustees cannot sell to one of themselves without the leave of the court, but the beneficiaries, being all *sui juris* and acting under separate advice, can sell to a trustee. If title is made in this way the recitals would show the equitable interests (an exception from the general rule), and the trustees would give legal effect to the sale by a conveyance under this sub-s.; in that case the conveyance could not be set aside. Conveyance by trustees to one of themselves.

As to conveyances liable to be set aside on account of the fiduciary relationship of the parties: 1 Prid., 22nd ed., Ch. IV. Voidable conveyances.

73.—(1) Where an individual executes a deed he shall either sign or place his mark upon the same and sealing alone shall not be deemed sufficient. Execution of deeds by an individual.

(2) This section applies only to deeds executed after the commencement of this Act.

As to sealing and delivery being generally sufficient when the deed is executed before 1926, see *Taunton* v. *Pepler*, 1820, 6 Madd. 166 (release); *Aveline* v. *Whisson*, 1842, 4 Man. & Gr. 801 (lease); *Tupper* v. *Foulkes*, 1861, 9 C. B. N. S. 797 (delivery inferred); Norton, Deeds, 5; 10 Hals. L. of E. 384; but as to a deed exercising a power, where the instrument creating the power requires a deed to be "signed" by the appointor: Norton, Deeds, 5; 10 Hals. L. of E. 395. Old law as to sealing and delivery.

74.—(1) In favour of a purchaser a deed shall be deemed to have been duly executed by a corporation aggregate if its seal be affixed thereto in the presence of and attested by its clerk, secretary or other permanent officer or his deputy, and a member of the board of directors, council or other governing body of the corporation, and where a seal purporting to be the seal Execution of instruments by or on behalf of corporations.

of a corporation has been affixed to a deed, attested by persons purporting to be persons holding such offices as aforesaid, the deed shall be deemed to have been executed in accordance with the requirements of this section, and to have taken effect accordingly.

"Purchaser": s. 205 (1) (xxi), *inf.*

Attestation and seal, enquiries as to.

This sub-s. removes the necessity for enquiry as to the formalities required under the memorandum, articles, charter, &c. of the corporation; independently of this s. the deed would be void unless such formalities were observed: *Cope* v. *Thames Haven Ry. Co.*, 1849, 3 Ex. 841.

As to the use of a seal out of the United Kingdom on behalf of a company incorporated under the Coy's. As., 1908 to 1917, see Coy's. (Consol.) A., 1908, ss. 78, 79. As to foreign companies: *ib.*, ss. 274—5.

This sub-s. applies only to deeds executed after 1925, but applies without regard to the date of appointment of the officer: sub-s. (5), *inf.*

As to conveyances to corporations: s. 60.

(2) The board of directors, council or other governing body of a corporation aggregate may, by resolution or otherwise, appoint an agent either generally or in any particular case, to execute on behalf of the corporation any agreement or other instrument not under seal in relation to any matter within the powers of the corporation.

Appointment of agent of a corporation aggregate to execute agreements.

If the instrument to be executed is under seal, then a power of attorney, also under seal, must be given.

In the case of a limited company the minutes of the director's meeting are sufficient evidence of the resolution, if purporting to be signed by the chairman of the meeting, or of the next succeeding meeting: Coy's. A., 1908, s. 71.

(3) Where a person is authorised under a power of attorney or under any statutory or other power to convey any interest in property in the name or on behalf of a corporation sole or aggregate, he may as attorney execute the conveyance by signing the name of the corporation in the presence of at least one witness, and in the case of a deed by affixing his own seal, and such execution shall take effect and be valid in like manner as if the corporation had executed the conveyance.

Execution of conveyance by agent of corporation sole or aggregate.

"Conveyance": s. 205 (1) (ii). "Signing the name of the corporation": see ss. 1 (7), 7 (4), 8 (1) as to conveying a legal estate in the name of the estate owner.

Compare s. 123, *inf.*, as to execution by an attorney on behalf of an individual.

As to powers of attorney generally, see ss. 123—129, *inf.*

(4) Where a corporation aggregate is authorised under a power of attorney or under any statutory or other

power to convey any interest in property in the name or on behalf of any other person (including another corporation), an officer appointed for that purpose by the board of directors, council or other governing body of the corporation by resolution or otherwise, may execute the deed or other instrument in the name of such other person; and where an instrument appears to be executed by an officer so appointed, then in favour of a purchaser the instrument shall be deemed to have been executed by an officer duly authorised.

Execution by officer of corporation aggregate as attorney or under a power.

This sub-s. enables an officer of a corporate attorney to execute documents "in the name" of an estate owner: see ss. 1 (7), 7 (4), 8 (1), *sup.* A corporation aggregate could not sign the name of another person or corporation, it could only execute a deed under its own seal. In the case of an individual signing is requisite: s. 73, *sup.*

For "statutory" powers of attorney: ss. 7 (4) and 8 (1), *sup.*; also ss. 88 and 89, *inf.*

"Trust corporations."

Many powers of attorney are granted to banks and other "trust corporations" (s. 205 (1) (xxviii)), hence this s. is required to enable them to convey in the name of an estate owner.

(5) The foregoing provisions of this section apply to transactions wherever effected, but only to deeds and instruments executed after the commencement of this Act, except that, in the case of powers or appointments of an agent or officer, they apply whether the power was conferred or the appointment was made before or after the commencement of this Act or by this Act.

Retrospective effect of s.

Though the s. only applies to instruments executed under a power of attorney after 1925, still it is immaterial when the power was given or the officer appointed.

Locality.

"Transactions wherever effected": thus the power may have been granted abroad, or the deed may be executed abroad. For a case where a recital of intention to go abroad governed the operative part, see *Danby* v. *Coutts*, 1885, 29 Ch. D. 500.

(6) Notwithstanding anything contained in this section, any mode of execution or attestation authorised by law or by practice or by the statute, charter, memorandum or articles, deed of settlement or other instrument constituting the corporation or regulating the affairs thereof, shall (in addition to the modes authorised by this section) be as effectual as if this section had not been passed.

Thus the s. confers concurrent or alternative powers.

Other modes of execution.

"By practice": *e.g.*, the Corporation of London execute deeds and other instruments in accordance with their ancient practice or usage. Whether a foreign corporation, having a licence in mortmain, can execute without a seal, query; *cf.* Grant, 58 *et seq.*; as to filing particulars: Coy's. A., 1908, ss. 274—5.

Rights of purchaser as to execution.

75.—(1) On a sale, the purchaser shall not be entitled to require that the conveyance to him be executed in his presence, or in that of his solicitor, as such; but shall be entitled to have, at his own cost, the execution of the conveyance attested by some person appointed by him, who may, if he thinks fit, be his solicitor.

(2) This section applies to sales made after the thirty-first day of December, eighteen hundred and eighty-one.

This s. replaces C. A., 1881, s. 8.

See s. 205 (1) (ii), (xxi), "conveyance," "purchaser."

Attestation of conveyances on sale.

The s. precludes the question raised in *Viney* v. *Chaplin*, 1858, 4 Drew. 237; 2 D. & J. 468; *Essex* v. *Daniell*, 1875, L. R. 10 C. P. 538; and *Ex parte Swinbanks*, 1879, 11 Ch. D. 525. It is applied, by L. R. A., 1925, s. 38 (1), to transfers on sale of registered land.

Covenants.

Covenants for title.

76.—(1) In a conveyance there shall, in the several cases in this section mentioned, be deemed to be included, and there shall in those several cases, by virtue of this Act, be implied, a covenant to the effect in this section stated, by the person or by each person who conveys, as far as regards the subject-matter or share of subject-matter expressed to be conveyed by him, with the person, if one, to whom the conveyance is made, or with the persons jointly, if more than one, to whom the conveyance is made as joint tenants, or with each of the persons, if more than one, to whom the conveyance is (when the law permits) made as tenants in common, that is to say:

This s. replaces C. A., 1881, s. 7, with the amendments mentioned in these notes.

"Conveyance": see s. 205 (1) (ii), and sub-s. (5), *inf.*

Tenants in common.

"When the law permits": see ss. 1, 34, *sup.*, 1st Sch., Pt. IV.; S. L. A., 1925, s. 36; these words are new. Though land cannot be conveyed to grantees as tenants in common, there is nothing in the Act to prevent the proceeds of sale of land or other personal estate (other than chattels real) from being assigned to persons as tenants in common.

Covenant not to be expressed to be for heirs, &c.

This s. should be read in connexion with s. 83, making singular include plural and plural singular in implied covenants, though in view of the Interp. A., 1889, and s. 61, *sup.*, s. 83 hardly seems necessary. S. 80 and sub-s. (6) of this s. render it unnecessary to provide expressly that the covenant shall be by the conveying party "for himself and his successors in title," or that it shall be with the "successors in title" of the party to whom the conveyance is made. Indeed, the word "heirs" no longer has any meaning in covenants: ss. 78, 79, *inf.*; Ad. of E. A., 1925, Pts. I. and IV. As regards acts to be

done under the covenant, when made with two or more, this s. should be read with s. 81 (1) (2).

Therefore when "A. and B." as beneficial owners hereby convey, it is implied that "A. and B. hereby for themselves, and their successors in title" (s. 80 (1)), "covenant," that is, they give a joint covenant. When "each of them A. and B. as beneficial owner hereby conveys," it is implied that "each of them hereby for himself and his successors in title covenants," that is, each gives a several covenant. Where they convey in both modes they give joint and several covenants. Again, in the covenant for further assurance the words "at the request and cost of the person," &c., where the conveyance is to several jointly, include "persons" (s. 83) and the survivors or survivor of them, and the person on whom the right to sue on the covenant devolves (s. 81 (1) (2)). Joint and several covenants, how implied.

The covenant of a conveying party is implied "as regards the subject-matter or share of subject-matter *expressed* to be conveyed by him"; as to the meaning of which words see *May* v. *Platt*, 1900, 1 Ch. 616. Hence it may still be expedient to use the words "in fee simple." It is not material that he should actually convey the whole beneficial interest in order to give the implied covenant as to the whole: see *Re Ray*, 1896, 1 Ch. 468, 474, 475. Therefore, in the case of a conveyance by joint tenants, or tenants in common, there can be implied covenants joint or several or both, as to the entirety or part, as may be required. In regard to land there will be no more conveyances to a purchaser by a tenant for life and remainderman; title must be made by the tenant for life as trustee of the fee simple. Covenant applies to subject *expressed* to be conveyed. No conveyance by tenant for life and remainderman.

Where the conveyance is by one to himself jointly with another—as it may be under s. 72—the implied covenants can now be given: s. 82; as to the previous law, see *Moffatt* v. *Van Millingen*, 1754, 2 Bos. & P. 124, note (*c*); *De Tastet* v. *Shaw*, 1818, 1 B. & Ald. 664; *Rose* v. *Poulton*, 1831, 2 B. & Ad. 822; *Faulkner* v. *Lowe*, 1848, 2 Exch. 595; *Beecham* v. *Smith*, 1858, E. B. & E. 442; *Boyce* v. *Edbrooke*, 1903, 1 Ch. 836; *Ellis* v. *Kerr*, 1910, 1 Ch. 529; *Napier* v. *Williams*, 1911, 1 Ch. 361. Conveyance by one to himself and another. Old law.

The covenants in this s. are applicable to property of all kinds, including policies of assurance, reversionary interests in personal estate, things in action, and personal chattels; see the definition of conveyance, s. 205 (1) (ii). Covenants applicable to all property.

As to covenants for title implied in the case of registered land: L. R. R., 1925, r. 77. Registered land.

(A) In a conveyance for valuable consideration, other than a mortgage, a covenant by a person who conveys and is expressed to convey as beneficial owner in the terms set out in Part I. of the Second Schedule to this Act;

This, with 2nd Sch., Pt. I., replaces covenant (A) in C. A., 1881, s. 7 (1). Conveyance for value by beneficial owner.

"Conveys and is expressed to convey": see *Re Ray*, 1896, 1 Ch. 468, 474, 475.

As to covenants by joint tenants, compare *National Society, &c.* v. *Gibbs*, 1900, 2 Ch. 280; as to covenants by tenants in common, see *Sutton* v. *Baillie*, 1891, 65 L. T. 528.

The meaning of sub-ss. (1)—(4) is that the actual words of conveyance must describe the conveying party as "beneficial owner," or "settlor," or otherwise (as intended): see the 5th Sch. It is not sufficient to recite the nature of his ownership, or object of the deed, and then for him to convey simply. He must be expressed to convey as "beneficial owner," "settlor," or otherwise as the case may require. How conveying party to be described.

It is not necessary, in order that a conveyance may operate under this s., to use the word "convey" or "conveyance." These words include all the opera- Word "convey" not necessary.

Any operative word sufficient.

tive words "assign," &c. ordinarily used, see s. 205 (1) (ii), and may be used instead of the word "grant": see s. 51 (2). Accordingly it is immaterial what word is used; in a conveyance in fee, particularly of an interest created *de novo*, "grant," in a conveyance under a power "appoint," and in the case of personal estate "assign," may be used, all these words being equally capable of attracting the covenants in this s.

See further notes to 2nd Sch., Pt. I., *inf.*

(B) In a conveyance of leasehold property for valuable consideration, other than a mortgage, a further covenant by a person who conveys and is expressed to convey as beneficial owner in the terms set out in Part II. of the Second Schedule to this Act;

Conveyance of leaseholds for value.

This, with 2nd Sch., Pt. II., replaces covenant (B) in C. A., 1881, s. 7 (1). See notes to 2nd Sch., Pt. II., *inf.*

Other implied covenants.

For covenants implied on an assignment of the entirety of land comprised in a lease, or of leaseholds in respect of which the rent has been apportioned with the consent of the lessor, see s. 77 (1) (C), *inf.*, and Pt. IX. of 2nd Sch.; and for covenants implied on assignment of leaseholds at a rent apportioned without the consent of the lessor: s. 77 (1) (D), and Pt. X. of 2nd Sch.

(C) In a conveyance by way of mortgage (including a charge) a covenant by a person who conveys or charges and is expressed to convey or charge as beneficial owner in the terms set out in Part III. of the Second Schedule to this Act;

Covenants in charges.

This, with 2nd Sch., Pt. III., replaces covenant (C) in C. A., 1881, s. 7 (1). See notes to 2nd Sch., Pt. III., *inf.*

The reference to "charges" is new; it is consequential on the method authorised by s. 87 of creating "charges by way of legal mortgages," but the expressions "conveyance" and "convey" were sufficient to include charges: C. A., 1881, s. 2 (v) (vi).

(D) In a conveyance by way of mortgage (including a charge) of freehold property subject to a rent or of leasehold property, a further covenant by a person who conveys or charges and is expressed to convey or charge as beneficial owner in the terms set out in Part IV. of the Second Schedule to this Act;

Mortgages subject to rents.

This, with 2nd Sch., Pt. IV., replaces covenant (D) in C. A., 1881, s. 7 (1), as amended. The provision as to freehold property subject to a rent is new, and gives effect to the ordinary practice.

See notes to 2nd Sch., Pt. IV., *inf.*

(E) In a conveyance by way of settlement, a covenant by a person who conveys and is expressed to

convey as settlor in the terms set out in Part V. of the Second Schedule to this Act;

This, with 2nd Sch., Pt. V., replaces covenant (E) in C. A., 1881, s. 7 (1). See notes to 2nd Sch., Pt. V., *inf.*

Covenant in settlements.

(F) In any conveyance, a covenant by every person who conveys and is expressed to convey as trustee or mortgagee, or as personal representative of a deceased person, or as committee of a lunatic or as receiver of a defective, or under an order of the court, in the terms set out in Part VI. of the Second Schedule to this Act, which covenant shall be deemed to extend to every such person's own acts only, and may be implied in an assent by a personal representative in like manner as in a conveyance by deed.

This, with 2nd Sch., Pt. VI., replaces covenant (F) in C. A., 1881, s. 7 (1), as amended. See note to 2nd Sch., Pt. VI.

Covenants by trustees, &c.

The implied covenant by a receiver of a defective is new. For "defective": s. 205 (1) (xiii).

Receivers of defectives.

(2) Where in a conveyance it is expressed that by direction of a person expressed to direct as beneficial owner another person conveys, then, for the purposes of this section, the person giving the direction, whether he conveys and is expressed to convey as beneficial owner or not, shall be deemed to convey and to be expressed to convey as beneficial owner the subject-matter so conveyed by his direction; and a covenant on his part shall be implied accordingly.

This sub-s. replaces C. A., 1881, s. 7 (2).

Under sub-s. 1 the covenant implied on the part of any person conveying relates to what he himself conveys. Under this sub-s. the covenant implied on the part of the person directing applies to what another conveys by his direction. The same result would be attained by making him convey by way of confirmation as beneficial owner.

By direction of beneficial owner.

After 1925 a tenant for life will merely convey "as trustee," save where he is absolutely and beneficially entitled, subject only to equitable interests which will be overreached by the conveyance; in this case he will convey as beneficial owner without qualification: General Conditions of 1925, cl. 25.

Covenants by a tenant for life.

For the former practice: Dart, 7th ed., 571; 1 Prid., 21st ed., 314; the covenant was qualified under C. A., 1881, s. 7 (2).

Old practice.

Title must, after 1925, always be made in the case of settled land by the "tenant for life" (including persons having powers of a tenant for life): S. L. A., 1925, s. 117 (1) (xxviii); or by the "statutory owners": *ib.* ss. 23, 26, 117 (1) (xxvi); see General Conditions of 1925, cl. 25; and s. 42, *sup.*

Settled land.

(3) Where a wife conveys and is expressed to convey as beneficial owner, and the husband also conveys and is

expressed to convey as beneficial owner, then, for the purposes of this section, the wife shall be deemed to convey and to be expressed to convey by direction of the husband, as beneficial owner; and, in addition to the covenant implied on the part of the wife, there shall also be implied, first, a covenant on the part of the husband as the person giving that direction, and secondly, a covenant on the part of the husband in the same terms as the covenant implied on the part of the wife.

This sub-s. replaces C. A., 1881, s. 7 (3).

Conveyance by husband and wife.

It is not usual for a husband to concur in a conveyance by a married woman of her separate property.

In any case, however, in which the husband joins to convey and confirm, and each is expressed to convey as beneficial owner; then, within this sub-s., she will be deemed to convey by the direction of her husband as beneficial owner, and the three following covenants will be implied:—(1) by the wife as beneficial owner; (2) by the husband as beneficial owner; and (3) by the husband in the same terms as the covenant implied on the part of the wife, that is in effect, that notwithstanding anything done by her or by any one through whom she derives title otherwise than, &c. For the effect of the wife's covenant, see notes to M. W. P. A., s. 1, and M. W. P. A., 1893, s. 1.

Married women.

A married woman tenant for life becomes a trustee of settled land and will convey without her husband, whenever she was married or acquired the land: S. L. A., 1925, s. 25.

(4) Where in a conveyance a person conveying is not expressed to convey as beneficial owner, or as settlor, or as trustee, or as mortgagee, or as personal representative of a deceased person, or as committee of a lunatic or as receiver of a defective, or under an order of the court, or by direction of a person as beneficial owner, no covenant on the part of the person conveying shall be, by virtue of this section, implied in the conveyance.

This sub-s. replaces C. A., 1881, s. 7 (4).

Express covenants not required.

Express covenants for title will seldom, if ever, be required; the covenants set out in 2nd Sch. can be made to apply by reference thereto, with or without modification, by an express provision: sub-s. (7).

(5) In this section a conveyance does not include a demise by way of lease at a rent, but does include a charge and "convey" has a corresponding meaning.

This sub-s. reproduces all that was left of C. A., 1881, s. 7 (5), after the enfranchisement of copyholds by L. P. A., 1922, Pt. V., and the amendment of the law of mortgages by ss. 85—7 and 1st Sch., Pts. VII. and VIII., *inf.*

"Lease at a rent."

As to the covenants for lessor's title implied by law in a lease, see *Baynes* v. *Lloyd,* 1895, 1 Q. B. 820; 2 *ib.* 610; *Budd-Scott* v. *Daniell,* 1902, 2 K. B. 351; *Jones* v. *Lavington,* 1903, 1 K. B. 253; *Markham* v. *Paget,* 1908, 1 Ch. 697. And as to the usual express limited covenant, see Woodfall, L. & T., 21st ed.,

859 *et seq.*; *Williams* v. *Gabriel*, 1906, 1 K. B. 155; *Jones* v. *Consolidated, &c., Ltd.*, 1916, 1 K. B. 123, 136.

(6) The benefit of a covenant implied as aforesaid shall be annexed and incident to, and shall go with, the estate or interest of the implied covenantee, and shall be capable of being enforced by every person in whom that estate or interest is, for the whole or any part thereof, from time to time vested.

This sub-s. replaces C. A., 1881, s. 7 (6).

Benefit of implied covenants in this s. to run with the land.

This sub-s. makes all covenants implied under this s. run with the land so as to be enforceable by every person interested under the conveyance, as to whose rights, see *David* v. *Sabin*, 1893, 1 Ch. 523, 536, 537, 540, 541, 545, 546; but a person deriving title under the implied covenantee cannot sue on the covenants if no interest passed under the conveyance with which the covenants could run: *Onward Bldg. Society* v. *Smithson*, 1893, 1 Ch. 1. As to a purchaser's right to a chain of covenants, see *Scott* v. *Alvarez*, 1895, 1 Ch. 596, 606.

See further as to covenants, ss. 77—83, *inf.*

(7) A covenant implied as aforesaid may be varied or extended by a deed, or an assent, and, as so varied or extended, shall, as far as may be, operate in the like manner, and with all the like incidents, effects, and consequences, as if such variations or extensions were directed in this section to be implied.

This sub-s. replaces C. A., 1881, s. 7 (7), with the addition thereto of reference to an assent. See S. L. A., 1925, s. 8 (1); Ad. of E. A., 1925, s. 36.

Variation of statutory covenants may be made.

This sub-s. enables provisions to be inserted modifying the statutory covenant in any agreed manner. As so modified it will be equivalent, in effect, for the purpose of running with the land and otherwise, to the simple statutory covenant.

(8) This section applies to conveyances made after the thirty-first day of December, eighteen hundred and eighty-one, but only to assents by a personal representative made after the commencement of this Act.

Application to assents.

This sub-s. replaces C. A., 1881, s. 7 (8); and as to assents, see S. L. A., 1925, s. 8 (1); Ad. of E. A., 1925, s. 36.

Implied covenants in conveyances subject to rents.

77.—(1) In addition to the covenants implied under the last preceding section, there shall in the several cases in this section mentioned, be deemed to be included and implied, a covenant to the effect in this section stated, by and with such persons as are hereinafter mentioned, that is to say:—

(A) In a conveyance for valuable consideration, other than a mortgage, of the entirety of the land affected by a rentcharge, a covenant by the

grantee or joint and several covenants by the grantees, if more than one, with the conveying parties and with each of them, if more than one, in the terms set out in Part VII. of the Second Schedule to this Act. Where a rentcharge has been apportioned in respect of any land, with the consent of the owner of the rentcharge, the covenants in this paragraph shall be implied in the conveyance of that land in like manner as if the apportioned rentcharge were the rentcharge referred to, and the document creating the rentcharge related solely to that land:

Implied covenants for indemnity against rents.

"Conveyance": s. 205 (1) (ii).

As to apportionment of rentcharges, see ss. 190—192, *inf.*

See note to Part VII. of 2nd Sch.

This and the next para. gives statutory effect to the usual practice on sales of land affected by a rentcharge, and enable deeds to be shortened.

"Entirety."

Para. (A) applies to a conveyance of the "entirety" of land affected by the original rentcharge or by a legally apportioned rentcharge.

Operation of implied covenants.

The covenants run with the land: sub-s. (5); they can be implied in any kind of conveyance, voluntary or otherwise, under sub-s. (4), except in a lease at a rent: sub-s. (3); and can be varied or extended by deed in any way: sub-ss. (6) and (7).

Reference to covenants in deeds.

It will be a convenient practice to refer in deeds to the implied covenants, till the s. becomes generally well known, to prevent express covenants to the like effect being added. As to registered land: L. R. R., 1925, rr. 76—77.

Remedies and equitable apportionments.

This s. is supplemented by the remedies conferred by s. 190, *inf.* See *ib.* sub-s. (1) as to equitable apportionments of rentcharges.

(B) In a conveyance for valuable consideration, other than a mortgage, of part of land affected by a rentcharge, subject to a part of that rentcharge which has been or is by that conveyance apportioned (but in either case without the consent of the owner of the rentcharge) in respect of the land conveyed:—

(i) A covenant by the grantee of the land or joint and several covenants by the grantees, if more than one, with the conveying parties and with each of them, if more than one, in the terms set out in paragraph (i) of Part VIII. of the Second Schedule to this Act;

Variation where part of land is subjected to the entire rent.

If the land is by the conveyance charged with the entire rent, then the covenant implied will, under sub-s. (2), have effect as if the entire rent were mentioned therein.

(ii) A covenant by a person who conveys or is expressed to convey as beneficial owner, or joint and several covenants by the persons who so convey or are expressed to so convey, if at the date of the conveyance any part of the land affected by such rentcharge is retained, with the grantees of the land and with each of them (if more than one) in the terms set out in paragraph (ii) of Part VIII. of the Second Schedule to this Act:

Variation where the land is exonerated.

Where the land is by the conveyance exonerated from the rent, then the implied covenant under (ii) will, under sub-s. (2), have effect as if the entire rent were the balance of the rent, and the words "other than the covenant to pay the entire rent" were omitted.

"Conveys and is expressed to convey": see note to s. 76 (1), *sup.*, and sub-s. (4), *inf.* See further note to Part VIII. of 2nd Sch.

"Part of the land."

Para. (B) applies only where "part of the land affected" is conveyed, and supplies the usual covenant on each side.

The practice of conveying land subject to part of a rentcharge not legally apportioned is unfortunately prevalent, hence cannot be ignored; the better practice generally is to demise the land for a long term (say 5,000 years) at a rent equal to the amount intended to be imposed on the land; and to charge the rent reserved with the payment of part of the rentcharge. This leaves the fee simple in one owner liable for the whole rentcharge, but he has the benefit of the rents reserved on each demise.

Overreaching legal rentcharges; payment into court.

No provision is made for overreaching legal rentcharges (not created by a settlement for family purposes), but they can be defeated by payment into court under s. 50, *sup.*, or with greater facility under s. 191, *inf.*

(C) In a conveyance for valuable consideration, other than a mortgage, of the entirety of the land comprised in a lease, for the residue of the term or interest created by the lease, a covenant by the assignee or joint and several covenants by the assignees (if more than one) with the conveying parties and with each of them (if more than one) in the terms set out in Part IX. of the Second Schedule to this Act. Where a rent has been apportioned in respect of any land, with the consent of the lessor, the covenants in this paragraph shall be implied in the conveyance of that land in like manner as if the apportioned rent were the original rent reserved, and the lease related solely to that land:

Implied covenants for indemnity against rent and covenants of lease.

See note to Part IX. of 2nd Sch.

This and the next para. supply the usual covenants on sales of leaseholds at a rent.

"Entirety." Para. (C) applies to an assignment of the "entirety" of the leasehold land affected by the rent originally reserved or a legally apportioned part of it.

Registered land. As to registered land: L. R. A., 1925, s. 24.

(D) In a conveyance for valuable consideration, other than a mortgage, of part of the land comprised in a lease, for the residue of the term or interest created by the lease, subject to a part of the rent which has been or is by the conveyance apportioned (but in either case without the consent of the lessor) in respect of the land conveyed:—

(i) A covenant by the assignee of the land, or joint and several covenants by the assignees, if more than one, with the conveying parties and with each of them, if more than one, in the terms set out in paragraph (i) of Part X. of the Second Schedule to this Act;

Variation where part of the land is subjected to the entire rent. If the term in the part of the land assigned is charged with the entire rent, then the covenant will, under sub-s. (2), have effect as if the entire rent were mentioned therein.

(ii) A covenant by a person who conveys or is expressed to convey as beneficial owner, or joint and several covenants by the persons who so convey or are expressed to so convey, if at the date of the conveyance any part of the land comprised in the lease is retained, with the assignees of the land and with each of them (if more than one) in the terms set out in paragraph (ii) of Part X. of the Second Schedule to this Act.

"Part of the land." Para. (D) applies only where "part of the land comprised in the lease" is assigned and supplies the usual covenants on each side.

Equitable apportionments. As to equitable apportionments: s. 190 (3).

Variations where the land is exonerated. Where the part of the land comprised in the lease is by the assignment exonerated from the rent, then the implied covenant under (ii) will, under sub.-s. (2), *infra*, have effect as if the entire rent were the balance of the rent and the words "other than the covenant to pay the entire rent" were omitted.

Assignments of part of land. Here again the practice of assigning part of the land subject to a part of the rent not legally apportioned is too well-established to ignore; at the same time the better practice has always been, in these cases, to make title by sub-demising at a rent equal to the amount of the rent intended to be borne by the land in question. See General Conditions of 1925, cl. 27.

(2) Where in a conveyance for valuable consideration, other than a mortgage, part of land affected by a rent-

charge, or part of land comprised in a lease is, without the consent of the owner of the rentcharge or of the lessor, as the case may be, expressed to be conveyed—

(i) subject to or charged with the entire rent—

then paragraph (B) (i) or (D) (i) of the last subsection, as the case may require, shall have effect as if the entire rent were the apportioned rent; or

(ii) discharged or exonerated from the entire rent—

then paragraph (B) (ii) or (D) (ii) of the last subsection, as the case may require, shall have effect as if the entire rent were the balance of the rent, and the words "other than the covenant to pay the entire rent" had been omitted.

Variations where the land is by the conveyance charged exclusively or exonerated.

These variations are referred to under the paras., *sup.*, affected thereby, and are further explained in the notes to the 2nd Sch.

"Without the consent of the owner of the rentcharge or of the lessor" no variation is required in these cases, for the rents having been legally apportioned, either para. (A) or (C) will apply.

Rent legally apportioned.

(3) In this section "conveyance" does not include a demise by way of lease at a rent.

Compare s. 76 (5), *sup.*

(4) Any covenant which would be implied under this section by reason of a person conveying or being expressed to convey as beneficial owner may, by express reference to this section, be implied, with or without variation, in a conveyance, whether or not for valuable consideration, by a person who conveys or is expressed to convey as settlor, or as trustee, or as mortgagee, or as personal representative of a deceased person, or as committee of a lunatic, or as receiver of a defective, or under an order of the court.

Cases where the covenants by the conveying parties must be referred to.

The covenants by the conveying parties under paras. (B) and (D), *sup.*, will, independently of this sub-s., only be implied where they convey "as beneficial owners."

The covenants by the grantees or assignees will be implied without the use of any technical expression.

Registered land.

In the case of registered land the intent to imply any covenant under this s. should be referred to in the disposition.

Covenants by persons in a fiduciary position.

Where the conveying parties are in a fiduciary position they may desire to qualify the covenants which would have been implied had they conveyed "as beneficial owners," hence these covenants are not incorporated in conveyances without an "express reference to this section"; presumably a reference to the 2nd Sch. would be sufficient, as that Sch. forms part of this s.

Incorporation by reference.

(5) The benefit of a covenant implied as aforesaid shall be annexed and incident to, and shall go with, the estate or interest of the implied covenantee, and shall be capable of being enforced by every person in whom that estate or interest is, for the whole or any part thereof, from time to time vested.

Covenants running with the land.

The general rule is that covenants for indemnity or to pay a rentcharge are mere personal covenants and do not run with the land; under this sub-s. the benefit will pass to the owner of the protected land without express assignment.

Actions on the covenant.

This sub-s. will facilitate proceedings taken on the covenants, for it places these covenants on the same footing as covenants for title. See s. 76 (6), *sup.*, and note thereto.

Liability of assignees to indemnify.

An assignee of leaseholds is in general liable, independently of express contract, to give a covenant to indemnify the assignor: *Pember* v. *Mathers*, 1779, 1 Bro. C. C. 52; *Staines* v. *Morris*, 1812, 1 Ves. & B. 8; *Close* v. *Wilberforce*, 1838, 1 Beav. 112 (equitable assignee); *Cochrane* v. *Robinson*, 1840, 11 Sim. 378; and see General Conditions of 1925, cl. 27, which relates also to conveyances subject to rentcharges.

The Limitation Acts.

The Limitation Acts apply to bar remedies under covenants for title: 2 Dart, 7th ed., 788, 789; *semble*, they would similarly apply after breaches of the covenants implied under this s. As to a personal covenant to pay a rentcharge, see *Shaw* v. *Crompton*, 1910, 2 K. B. 370.

(6) A covenant implied as aforesaid may be varied or extended by deed, and, as so varied or extended, shall, as far as may be, operate in the like manner, and with all the like incidents, effects and consequences, as if such variations or extensions were directed in this section to be implied.

Power to vary.

Cf. s. 76 (7), *sup.*; see also next sub-s. for an example. This power may be required where the covenantor is in a fiduciary position.

(7) In particular any covenant implied under this section may be extended by providing that—

(a) the land conveyed; or

(b) the part of the land affected by the rentcharge which remains vested in the covenantor; or

(c) the part of the land demised which remains vested in the covenantor;

shall, as the case may require, stand charged with the payment of all money which may become payable under the implied covenant.

Power to charge the land.

Such a charge is not affected by the perpetuity rule: s. 162 (1) (a), *inf.* *Cf.* 1 Prid., 21st ed., 596.

(8) This section applies only to conveyances made after the commencement of this Act.

Benefit of covenants relating to land.

78.—(1) A covenant relating to any land of the covenantee shall be deemed to be made with the covenantee and his successors in title and the persons deriving title under him or them, and shall have effect as if such successors and other persons were expressed.

For the purposes of this subsection in connexion with covenants restrictive of the user of land "successors in title" shall be deemed to include the owners and occupiers for the time being of the land of the covenantee intended to be benefited.

(2) This section applies to covenants made after the commencement of this Act, but the repeal of section fifty-eight of the Conveyancing Act, 1881, does not affect the operation of covenants to which that section applied.

This s. reproduces C. A., 1881, s. 58, as amended. The s. now refers to "successors in title," for "heirs" no longer has any meaning in covenants or as a word of limitation.

Benefit of real covenants.

This and the next two ss. render unnecessary the mention of "successors in title," or "executors, administrators, and assigns," of the covenantee for the purpose of making the benefit of a covenant run with the land, but do not make a covenant so run where it would not so run if the "successors in title" were expressed.

Restrictive covenants, mode of.

The second para. of sub-s. (1) and s. 79 (2) render unnecessary any special words when restrictive covenants are entered into. It will only be necessary to show what land is intended to be bound and what land is to have the benefit of the covenants.

Lessees.

A lessee of a covenantee can enforce a *restrictive* covenant as an assign: *Taite* v. *Gosling*, 1879, 11 Ch. D. 273, provided that, if made after 1925, a land charge has been registered; but an underlessee is not an assign of his lessor so as to be entitled to the benefit of a *positive* covenant entered into with the latter by the superior landlord: *South of England Dairies, Ltd.* v. *Baker*, 1906, 2 Ch. 631; *Westhoughton U. D. C.* v. *Wigan, &c. Co., Ltd.*, 1919, 1 Ch. 159. *Secus*, in the case of a *restrictive* covenant if he is an occupier.

Benefit of lessee's covenants.

As to the devolution of the benefit of a lessee's inherent covenants, see s. 141, *sup.*, which annexes the benefit thereof to the reversion, and so as regards such covenants gives this benefit to "successors in title" though not mentioned, and though the covenant be not entered into with the reversioner, *e.g.*, where the lessor has a mere power. After 1925 the estate owner or mortgagee in possession (s. 99) will be the person to grant leases.

Benefit of restrictive covenants.

As to the devolution generally of the benefit of restrictive covenants, see *Keates* v. *Lyon*, 1869, 4 Ch. 218; *Renals* v. *Cowlishaw*, 1878, 9 Ch. D. 125; 11 *ib.* 866; *Nottingham Patent Brick & Tile Co.* v. *Butler*, 1885, 15 Q. B. D. 261; 16 *ib.* 778; *Austerberry* v. *Oldham*, 1885, 29 Ch. D. 750, 775—8, 780, 784; *Rogers* v. *Hosegood*, 1900, 2 Ch. 388; *Osborne* v. *Bradley*, 1903, 2 Ch. 446; *Elliston* v. *Reacher*, 1908, 2 Ch. 374, 665; *Reid* v. *Bickerstaff*, 1909, 2 Ch. 305; *Long* v. *Gray*, 1913, 58 Sol. J. 46; *Ives* v. *Brown*, 1919, 2 Ch. 314. As to

Registered land.

building schemes, see in particular the rules enunciated by Parker, J., in *Elliston* v. *Reacher, sup.;* and as to the effect of entries of restrictive covenants on the register under the L. R. A., 1925, s. 50, see *Willè* v. *St. John*, 1910, 1 Ch. 325.

Burden of lessor's covenants.

Successors need not be mentioned.

In the case of a lease, s. 142 annexes the *obligation* of a *lessor's* inherent covenants to the reversionary estate, and so (as regards such covenants) binds the successors in title, though not mentioned, where the lessor has power to bind that estate. In a lease where the covenant concerns a thing not *in esse* at the time of the demise, as to build a wall (*Spencer's Case*, 1 Smith L. C., 11th ed., 55), it will not be necessary after 1925 to mention assigns: s. 79 (1). In cases other than those between landlord and tenant it is the better opinion (there is nothing in the Acts to alter the general rules as to the burden of positive covenants laid down in *Austerberry* v. *Oldham*, 1885, 29 Ch. D. 750) that the burden of a covenant not involving a grant does not run with the land at law, independently of the Jud. A., 1925, ss. 36—44; see *Austerberry* v. *Oldham, sup.; Knight* v. *Simmonds*, 1896, 2 Ch. 294, 297; *Rogers* v. *Hosegood, sup.;*

Burden of restrictive covenants.

L.C.C. v. *Allen*, 1914, 3 K. B. 642, 653; but the burden of a restrictive covenant does run in equity, except as against a purchaser for value *without* notice, and *with* the legal estate, where the covenant was made before 1926, or where made after 1925 if a land charge has been registered; this assumes that the intention is clear that the assigns should be bound: see *Tulk* v. *Moxhay*, 1848, 2 Ph. 774, where the assigns were mentioned: *Wilson* v. *Hart*, 1866, 1 Ch. 463, where the assigns were not mentioned; and see *Re Fawcett & Holmes*, 1889, 42 Ch. D. 150, where they were mentioned in the affirmative part of the covenant, but not in the negative part: the covenant must be merely restrictive of the user of land, must be enforceable by injunction, and impose no pecuniary obligation: *Haywood* v. *Brunswick Build. Soc.*, 1881, 8 Q. B. D. 403, 408; *London & S. W. R. Co.* v. *Gomm*, 1882, 20 Ch. D. 562; *Austerberry* v. *Oldham, sup.; Re Nisbet & Potts*, 1905, 1 Ch. 391; 1906, 1 Ch. 386; *Wilkes* v. *Spooner*,

Requisites of.

1911, 2 K. B. 473. There must also be some land to which the benefit of the covenant is annexed: *Formby* v. *Barker*, 1903, 2 Ch. 539; *Millbourn* v. *Lyons*, 1914, 2 Ch. 231, *L.C.C.* v. *Allen, sup.* In such cases freeholders (*Tulk* v. *Moxhay, sup.*), lessees (*Holloway* v. *Hill*, 1902, 2 Ch. 612), underlessees (*Teape* v. *Douse*, 1905, 92 L. T. 319), tenants from year to year (*Wilson* v. *Hart, sup.*), and mere occupiers (*Mander* v. *Falcke*, 1891, 2 Ch. 554) are alike bound if they have actual or constructive notice, where the covenant is made before 1926; and where made after 1925 if a land charge has been registered.

Liability for assigns' acts.

As to the liability of a covenantor for the acts of his assigns or lessees, see *Bryant* v. *Hancock*, 1898, 1 Q. B. 716; 1899, A. C. 442; *Wilson* v. *Twamley*, 1904, 2 K. B. 99; *Palethorpe* v. *Home Brewery Co., Ltd.*, 1906, 2 K. B. 5; *Ricketts* v. *Enfield Churchwardens*, 1909, 1 Ch. 544; *Powell* v. *Hemsley*, 1909, 1 Ch. 680; 1909, 2 Ch. 252; *Atkin* v. *Rose*, 1923, 1 Ch. 502.

S. 58 of the C. A., 1881 (repealed), was as follows:—

C. A. 1881, s. 58.

58.—(1) *A covenant relating to land of inheritance, or devolving on the heir as special occupant, shall be deemed to be made with the covenantee, his heirs and assigns, and shall have effect as if heirs and assigns were expressed.*

(2) *A covenant relating to land not of inheritance, or not devolving on the heir as special occupant, shall be deemed to be made with the covenantee, his executors, administrators, and assigns, and shall have effect as if executors, administrators and assigns were expressed.*

(3) *This section applies only to covenants made after the commencement of this Act.*

For an example of the operation of this s., see *Dyson* v. *Forster*, 1909, A. C. 98.

Burden of covenants relating to land.

79.—(1) A covenant relating to any land of a covenantor or capable of being bound by him, shall, unless a contrary intention is expressed, be deemed to be made by the covenantor on behalf of himself his successors in title and the persons deriving title under him or them, and, subject as aforesaid, shall have effect as if such successors and other persons were expressed.

This subsection extends to a covenant to do some act relating to the land, notwithstanding that the subject-matter may not be in existence when the covenant is made.

This s. is new. See note to s. 78, *sup.*, explaining both ss.

The two ss. remove conveyancing difficulties in regard to the form of covenants.

Things not *in esse*.

The 2nd para. of this sub-s. removes the difficulty shown by the first and second resolutions in *Spencer's Case*, 1583, 5 Co. Rep. 16a; *Minshull* v. *Oakes*, 1858, 2 H. & N. 793; Woodfall, 21st ed., 201, 205.

(2) For the purposes of this section in connexion with covenants restrictive of the user of land "successors in title" shall be deemed to include the owners and occupiers for the time being of such land.

Restrictive covenants, form of.

See s. 78 (1), 2nd para., *sup.* These two ss. enable restrictive covenants to be entered into in the same form as ordinary positive covenants provided that, by an explanatory prefix or otherwise, it is shown what land is to be bound and benefited respectively.

Discharge or modification.

As to the discharge or modification of restrictive covenants: s. 84, *inf.*

(3) This section applies only to covenants made after the commencement of this Act.

Covenants binding land.

80.—(1) A covenant and a bond and an obligation or contract under seal made after the thirty-first day of December, eighteen hundred and eighty-one, binds the real estate as well as the personal estate of the person making the same if and so far as a contrary intention is not expressed in the covenant, bond, obligation, or contract.

This subsection extends to a covenant implied by virtue of this Act.

This sub-s. replaces C. A., 1881, s. 59, with amendments.

Creditor's rights on

The real and personal estate are assets for payment of debts: Ad. of E. A., 1925, s. 32.

death of covenantor after 1925.

As to the powers of the court in relation to following property, see Ad. of E. A., 1925, s. 38.

Where the covenantor dies after 1925, there is no heir who can be sued: *ib.* s. 45; the Debts Recovery Act, 1830, is repealed by that Act (2nd Sch., Pt. I.) as respects deaths after 1925. All the real and personal estate pass to the personal representatives: *ib.* s. 1; for copyholds are enfranchised: L. P. A., 1922, Pt. V., *sup.*

Implied covenants, list of.

For implied covenants: ss. 48 (2) (to register conveyances and devolutions of leases); 76 (for title); 77 (for indemnity); 81 (1) (with each covenantee severally); 117 (in statutory legal charges); 118 (in statutory transfers); 119 (with each covenantee in statutory charges and transfers).

Creditor's rights on death of covenantor before 1926.

Where the covenantor died before 1926, although by the Ad. of E. A., 1869 (repealed as to deaths after 1925), specialty debts binding the heirs rank no higher in the administration of assets than other debts against the land, there is still, under the Debts Recovery Act, 1830, ss. 6 and 8 (similarly repealed), the power to sue the heir or devisee personally for such debts, and obtain judgment against him to the extent of the assets which have devolved on him: see *Re Hedgely*, 1886, 34 Ch. D. 379; *Re Atkinson*, 1908, 2 Ch. 307. Accordingly where the covenantor died before 1898 a creditor having so obtained judgment took priority of other creditors against the land, and recovered without any necessity for probate or letters of administration, which were only required to support proceedings in an administration action. But where the covenantor died after 1897, and before 1926, administration must, save in the case of copyholds, be taken out and the property must be conveyed to the heir, or the devise assented to, before proceedings can be effectual against the heir or devisee: L. T. A., 1897, ss. 1 and 3. All covenants bound the heir or devisee so as to enable an action to be brought against him personally, though the heir was not expressly mentioned. It has always been unnecessary to mention expressly executors or administrators.

Extent of Ad. of E. A., 1925.

The Ad. of E. A., 1925, applies to deaths after 1925: see s. 54; save that s. 12 (number of personal representatives), replaced by Jud. A., 1925, s. 160, applies to grants made after 1925, whether the testator or intestate died before or after 1926.

(2) Every covenant running with the land, whether entered into before or after the commencement of this Act, shall take effect in accordance with any statutory enactment affecting the devolution of the land, and accordingly the benefit or burden of every such covenant shall vest in or bind the persons who by virtue of any such enactment or otherwise succeed to the title of the covenantee or the covenantor, as the case may be.

Covenants running with the land, devolution of.

This sub-s. is new: see definition in sub-s. (4).

As to devolution of the land, see Ad. of E. A., 1925, Pts. I. and IV.

This sub-s. is only required to bring the devolution of the burden or benefit into line with the new law. See notes to s. 78, *sup.*

(3) The benefit of a covenant relating to land entered into after the commencement of this Act may be made to run with the land without the use of any technical expression if the covenant is of such a nature that the

benefit could have been made to run with the land before the commencement of this Act.

Mode of annexing benefit.

This sub-s. enables technical expressions to be dispensed with, but some expression of intention may still be necessary to show what lands are intended to be bound and benefited respectively by the covenant: *Elliston* v. *Reacher*, 1908, 2 Ch. 374, 665; and note to s. 78.

What can be made to run.

Save that the benefit of covenants for indemnity under s. 77, *sup.*, are made expressly to run with the land, the class of covenants capable of running with the land has not been extended; though under ss. 78 and 79 the methods of making covenants run with the land have been simplified; for instance, "assigns" need not be mentioned.

(4) For the purposes of this section, a covenant runs with the land when the benefit or burden of it, whether at law or in equity, passes to the successors in title of the covenantee or the covenantor, as the case may be.

Definition of covenants running with land.

As to what do run with the land, see note to s. 78, *sup.*; also *Spencer's Case*, 1583, 5 Co. Rep. 16 a; Woodfall, 21st ed., 200 *et seq.*

Lessor's and lessee's covenants.

The obligation of the lessor's covenants runs with the reversion, notwithstanding severance: s. 142, *inf.*; as to benefit of lessee's covenants running with the reversion: s. 141.

Collateral covenants.

A covenant in an underlease by the underlessor to perform the covenants of the head lease is only a collateral covenant and is not binding on the assigns of the underlessor though named: *Dewar* v. *Goodman*, 1908, 1 K. B. 94; 1909, A. C. 72.

Effect of covenant with two or more jointly.

81.—(1) A covenant, and a contract under seal, and a bond or obligation under seal, made with two or more jointly, to pay money or to make a conveyance, or to do any other act, to them or for their benefit, shall be deemed to include, and shall, by virtue of this Act, imply, an obligation to do the act to, or for the benefit of, the survivor or survivors of them, and to, or for the benefit of, any other person to whom the right to sue on the covenant, contract, bond, or obligation devolves, and where made after the commencement of this Act shall be construed as being also made with each of them.

Covenants with each of joint covenantees.

This s. replaces C. A., 1881, s. 60, but the last two lines extending the principle in s. 119, *inf.*, to covenants generally are new.

Thus it becomes unnecessary, when preparing a covenant with several to do acts to them or for their benefit, to insert a separate covenant with each of them.

Survivorship.

The original s. provided for devolution to survivors: see note to sub-s. (4), *inf.*

(2) This section extends to a covenant implied by virtue of this Act.

Implied.

See list of implied covenants in note to s. 80 (1).

(3) This section applies only if and as far as a contrary intention is not expressed in the covenant, contract, bond, or obligation, and has effect subject to the covenant, contract, bond, or obligation, and to the provisions therein contained.

Contrary intention.

In view of the implications made by this Act, the contrary intention should be clearly indicated.

(4) Except as otherwise expressly provided, this section applies to a covenant, contract, bond, or obligation made or implied after the thirty-first day of December, eighteen hundred and eighty-one.

Extent of s.

"Except as otherwise": see last two lines of sub-s. (1).

This s. replaces C. A., 1881, s. 60, as amended.

Effect of ss. 78—81.

This s. must be read in connexion with ss. 78 to 80. The result, taken together, will be that all covenants will be greatly shortened, *e.g.*, the form of a covenant with several persons is reduced to that of a covenant with one person. The same principle applies to any contract under seal, as, for instance, the proviso for reduction of the rate of interest in a mortgage, and to contracts in a marriage settlement.

Covenantees favoured.

As to covenants, apart from these ss., being "measured and moulded according to the interests of the covenan*tees*," see the authorities cited in *White* v. *Tyndall*, 1888, 13 A. C. 263.

Covenants and agreements entered into by a person with himself and another or others.

82.—(1) Any covenant, whether express or implied, or agreement entered into by a person with himself and one or more other persons shall be construed and be capable of being enforced in like manner as if the covenant or agreement had been entered into with the other person or persons alone.

This s. is new. It overrules *Boyce* v. *Edbrooke*, 1903, 1 Ch. 836; *Ellis* v. *Kerr*, 1910, 1 Ch. 529; *Napier* v. *Williams*, 1911, 1 Ch. 361.

(2) This section applies to covenants or agreements entered into before or after the commencement of this Act, and to covenants implied by statute in the case of a person who conveys or is expressed to convey to himself and one or more other persons, but without prejudice to any order of the court made before such commencement.

Retrospective.

The s. is made retrospective (subject to orders made by the court), particularly with a view to validating covenants wrongly framed; the most common case occurred in transfers of mortgages by trustees to continuing and new trustees by conveying "as mortgagees."

Validation of restrictive and other covenants.

If a restrictive covenant, made before 1926, has been ignored by reason of its having been made with the covenantor and others, this would be a strong reason for discharging the covenant under s. 84.

Covenants implied by statute.

For list of covenants implied by this Act, see note to s. 80 (1).

Construction of implied covenants.

83. In the construction of a covenant or proviso, or other provision, implied in a deed or assent by virtue of this Act, words importing the singular or plural number, or the masculine gender, shall be read as also importing the plural or singular number, or as extending to females, as the case may require.

Singular; plural; gender.

This s. replaces C. A., 1881, s. 64: in view of s. 61, *sup.*, and of Interp. A., 1889, s. 1 (1); this s. appears to have become obsolete, but was retained to show that no alteration in this respect is made in the construction of covenants implied in documents made before or after 1925. The words "or assent" are new: see s. 76, *sup.*

Power to discharge or modify restrictive covenants affecting land.

84.—(1) The Authority hereinafter defined shall (without prejudice to any concurrent jurisdiction of the court) have power from time to time, on the application of any person interested in any freehold land affected by any restriction arising under covenant or otherwise as to the user thereof or the building thereon, by order wholly or partially to discharge or modify any such restriction (subject or not to the payment by the applicant of compensation to any person suffering loss in consequence of the order) on being satisfied—

(a) that by reason of changes in the character of the property or the neighbourhood or other circumstances of the case which the Authority may deem material, the restriction ought to be deemed obsolete, or that the continued existence thereof would impede the reasonable user of the land for public or private purposes without securing practical benefits to other persons, or, as the case may be, would unless modified so impede such user; or

(b) that the persons of full age and capacity for the time being or from time to time entitled to the benefit of the restriction, whether in respect of estates in fee simple or any lesser estates or interests in the property to which the benefit of the restriction is annexed, have agreed, either expressly or by implication, by their acts or omissions, to the same being discharged or modified; or

(c) that the proposed discharge or modification will not injure the persons entitled to the benefit of the restriction:

Provided that no compensation shall be payable in

respect of the discharge or modification of a restriction by reason of any advantage thereby accruing to the owner of the land affected by the restriction, unless the person entitled to the benefit of the restriction also suffers loss in consequence of the discharge or modification, nor shall any compensation be payable in excess of such loss; but this provision shall not affect any right to compensation where the person claiming the compensation proves that by reason of the imposition of the restriction, the amount of the consideration paid for the acquisition of the land was reduced.

"Authority."

This s. is new. "Authority": sub-s. (10), *inf.*

Jurisdiction of the court saved.

As to the jurisdiction of the court independently of this s., and as to express or implied releases of the right to take proceedings, see *Bedford* v. *British Museum*, 1822, 2 My. & K. 552; *German* v. *Chapman*, 1877, 7 Ch. D. 271; *Knight* v. *Simmonds*, 1896, 2 Ch. 294, 297; *Sobey* v. *Sainsbury*, 1913, 2 Ch. 513; and Housing, Town Planning, &c. Act, 1919, s. 27, as respects the conversion of a house into several tenements. See also note to s. 82, *sup.*

Release of covenants by tenant for life, &c.

A tenant for life can release, &c. the benefit of restrictive covenants: S. L. A., 1925, s. 58; the powers conferred by s. 58 are exercisable by trustees for sale: s. 28, *sup.*; also by personal representatives: Ad. of E. A., 1925, s. 39.

Compensation.

The provision as to compensation follows the principle enacted in L. P. A., 1922, s. 139 (1) (ii).

Leaseholds.

Though this s. primarily relates to covenants affecting freehold land it is extended to restrictions affecting certain leasehold land by sub-s. (12).

(2) The court shall have power on the application of any person interested—

(a) To declare whether or not in any particular case any freehold land is affected by a restriction imposed by any instrument; or

(b) To declare what, upon the true construction of any instrument purporting to impose a restriction, is the nature and extent of the restriction thereby imposed and whether the same is enforceable and if so by whom.

Powers of the court.

As to evidence, see sub-s. (6), *inf.*; as to appeals from the "Authority": sub-s. (5), *inf.*

This sub-s. will be useful where the land bound or benefited by a restriction is described in the instrument imposing the restriction by some general or vague description, such as "the Blackacre estate," the meaning of which may vary from time to time. It will be necessary to ascertain what land was affected when the restriction was imposed.

(3) The Authority shall, before making any order under this section, direct such enquiries, if any, to be made of any local authority, and such notices, if any, whether by way of advertisement or otherwise, to be

given to such of the persons who appear to be entitled to the benefit of the restriction intended to be discharged, modified, or dealt with as, having regard to any enquiries notices or other proceedings previously made, given or taken, the Authority may think fit.

Enquiries and notices.

See also L. C. A., 1925, s. 15 (7), under which any prohibition of or restriction on the user or mode of user of land or buildings enforceable by a local authority is made a "local land charge."

(4) The Reference Committee mentioned in this section may make rules in relation to any applications to be made to the Authority under this section, and with the consent of the Treasury may prescribe the fees to be paid in connexion with any application to the Authority.

Rules.

"Reference Committee": see sub-s. (10), *inf.* For rules under this s., see Appendix No. IV., Vol. II. For rules of court: *ib.*, No. XI.

(5) Any order made under this section shall be binding on all persons, whether ascertained or of full age or capacity or not, then entitled or thereafter capable of becoming entitled to the benefit of any restriction, which is thereby discharged, modified, or dealt with, and whether such persons are parties to the proceedings or have been served with notice or not, but any order made by the Authority shall, in accordance with rules of court, be subject to appeal to the court.

Power to bind absent parties, &c.

See also R. S. C. Ord. 16, rr. 9 (representation of numerous parties), 32 (class of persons interested not known).

Appeals.

(6) An order may be made under this section notwithstanding that any instrument which is alleged to impose the restriction intended to be discharged, modified, or dealt with, may not have been produced to the court or the Authority, and the court or the Authority may act on such evidence of that instrument as it may think sufficient.

Evidence, building scheme.

In many cases persons bound by a building scheme within *Spicer* v. *Martin*, 14 A. C. 12, will not have possession of the document imposing the restriction.

(7) This section applies to restrictions whether subsisting at the commencement of this Act or imposed thereafter, but this section does not apply where the restriction was imposed on the occasion of a disposition

made gratuitously or for a nominal consideration for public purposes.

Extent of s. Public trusts.

To give power to vary a restriction or condition imposed when a public or charitable trust was created is beyond the scope of this s.; such matters are left to the jurisdiction of the Charity Commissioners.

(8) This section applies whether the land affected by the restrictions is registered or not, but in the case of registered land the Land Registrar shall give effect on the register to any order under this section when made.

Rectification of register.

See L. R. A., 1925, ss. 46 (discharge of restriction noted as incumbrance), 82 (rectification of register).

(9) Where any proceedings by action or otherwise are taken to enforce a restrictive covenant, any person against whom the proceedings are taken, may in such proceedings apply to the court for an order giving leave to apply to the Authority under this section, and staying the proceedings in the meantime.

Proceedings relating to restrictive covenants.

Obviously, where proceedings under this s. are likely to result in the modification or discharge of a covenant, it is better to dispose of them before granting a final injunction.

(10) In this section "the Authority" means such one or more of the Official Arbitrators appointed for the purposes of the Acquisition of Land (Assessment of Compensation) Act, 1919, as may be selected by the Reference Committee under that Act.

9 & 10 Geo. 5, c. 57.

(11) This section does not apply to restrictions imposed by the Commissioners of Works under any statutory power for the protection of any Royal Park or Garden or to restrictions of a like character imposed upon the occasion of any enfranchisement effected before the commencement of this Act in any manor vested in His Majesty in right of the Crown or the Duchy of Lancaster, nor to restrictions created or imposed—

(a) for Naval, Military or Air Force purposes;

(b) for civil aviation purposes under the powers of the Air Navigation Act, 1920.

10 & 11 Geo. 5, c. 80.

Restrictions for protection of royal parks, &c.

For the statutory power of the Commissioners of Works, see L. P. A., 1922, s. 137; in the past the Commissioners have consented to enfranchisement of land, parcel of a manor held of the Crown, on the terms that certain restrictions should be imposed: Cop. A., 1894, ss. 68—71, 95 (f).

As to para. (a), see Defence Acts, 1842 to 1873; Military Lands Acts, 1892 to 1903. Naval and Miltiary purposes.

(12) Where a term of more than seventy years is created in land (whether before or after the commencement of this Act) this section shall, after the expiration of fifty years of the term, apply to restrictions affecting such leasehold land in like manner as it would have applied had the land been freehold:

Provided that this subsection shall not apply to mining leases.

A recently created contract between a lessor and lessee must not be interfered with, but after fifty years have run the conditions of the neighbourhood may have completely changed. Even after a lease has been surrendered a restrictive covenant therein may, in effect, form part of a building scheme. Application to leaseholds.

A mining lease is outside the scope of the s. If mining rights ought to be altered the proper course is to proceed under the Mines (Working Facilities and Support) Act, 1923, Pt. I. Mining leases.

Part III.

Mortgages, Rentcharges, and Powers of Attorney.

Mortgages.

85.—(1) A mortgage of an estate in fee simple shall only be capable of being effected at law either by a demise for a term of years absolute, subject to a provision for cesser on redemption, or by a charge by deed expressed to be by way of legal mortgage: Mode of mortgaging freeholds.

Provided that a first mortgagee shall have the same right to the possession of documents as if his security included the fee simple.

As to mortgages created before 1926, see 1st Sch., Pts. VII. and VIII., *inf.*, and s. 39, *sup.*; also as to copyholds: L. P. A., 1922, 12th Sch., para. (1) (f). Mortgages before 1926.

For definitions of "mortgage," see s. 205 (1) (xvi); and of "term of years absolute," s. 205 (1) (xxvii). "Mortgage." "Term of years absolute."

As to charges by way of legal mortgage, see s. 87, *inf.*; and for form, 5th Sch., Form No. I.

Where a mortgage is not protected by a deposit of title deeds or by registration in a local deeds register, a land charge must be registered in respect of it: L. C. A., 1925, s. 10, Class C. (i). Charges by way of legal mortgage.

Registration of a land charge gives actual notice: s. 198, *inf.*

As to priority of mortgages created after 1925, see s. 97, *inf.*; unless the mortgage is protected by the deposit of documents or is registered, the date of registration of the land charge becomes the material date: *ib.* Priority of mortgages.

A person advancing money to trustees is, under T. A., 1925, s. 17, not concerned to see that the money is wanted or as to the application of it. Mortgages by trustees.

Equitable mortgages.

As to equitable mortgages, see ss. 90 and 91. A mortgage created before 1926 remains an equitable mortgage unless properly protected, notwithstanding the creation of a legal mortgage term: 1st Sch., Pt. VII., s. 6; Pt. VIII., s. 5.

Trusts of mortgage debts.

The disclosure of trusts affecting a mortgage debt will no longer bring those trusts on to the title of the land: s. 113, *inf.*

Right of first mortgagee to documents.

"Mortgagee" includes a chargee by way of legal mortgage: s. 205 (1) (xvi). The proviso removes the doubt whether a first mortgagee, not having the fee simple, has a right to the deeds: see 1 Davidson's Prec., 5th ed. 493.

(2) Any purported conveyance of an estate in fee simple by way of mortgage made after the commencement of this Act shall (to the extent of the estate of the mortgagor) operate as a demise of the land to the mortgagee for a term of years absolute, without impeachment for waste, but subject to cesser on redemption, in manner following, namely:—

(a) A first or only mortgagee shall take a term of three thousand years from the date of the mortgage:

(b) A second or subsequent mortgagee shall take a term (commencing from the date of the mortgage) one day longer than the term vested in the first or other mortgagee whose security ranks immediately before that of such second or subsequent mortgagee:

and, in this subsection, any such purported conveyance as aforesaid includes an absolute conveyance with a deed of defeasance and any other assurance which, but for this subsection, would operate in effect to vest the fee simple in a mortgagee subject to redemption.

Conveyance of fee simple by way of mortgage rendered impossible.

Thus this sub-s. renders it impossible after 1925 to convey a fee simple, whether legal or equitable, subject to redemption; an attempt to do so will only create a mortgage term. Mortgages made before 1926 are converted into mortgages by demise or sub-demise: 1st Sch., Pts. VII. and VIII. There is nothing in this s. to enable an equitable owner to create a legal mortgage. If a remainderman in fee mortgages his interest, he should charge it and give a covenant to execute a legal mortgage when that becomes possible, with an irrevocable power of attorney (s. 128) to give effect to the covenant.

(3) This section applies whether or not the land is registered under the Land Registration Act, 1925, or the mortgage is expressed to be made by way of trust for sale or otherwise.

Mortgage by way of trust for sale.

A mortgage "by way of trust for sale" would include a trust deed to secure debenture or debenture stock, hence the trustees of such deeds will, unless the security is effected by charge by way of legal mortgage, take only a mortgage term.

(4) Without prejudice to the provisions of this Act respecting legal and equitable powers, every power to

mortgage or to lend money on mortgage of an estate in fee simple shall be construed as a power to mortgage the estate for a term of years absolute, without impeachment for waste, or by a charge by way of legal mortgage or to lend on such security.

As to the provisions affecting legal and equitable powers, see s. 1 (7), *sup.*, subject to the savings in ss. 7, 8 and 9.

Powers to borrow or lend money on mortgage.

This brings all powers, either statutory (see, *e.g.*, the Small Dwellings Acquisition Act, 1899) or express, to borrow or lend money on mortgage into line. See also T. A., 1925, s. 1 (1) (b). As to the powers of a tenant for life to raise money: S. L. A., 1925, ss. 69—71; these powers are exercisable by trustees for sale: L. P. A., 1925, s. 28; also by personal representatives: Ad. of E. A., 1925, s. 39.

Mode of mortgaging leaseholds.

86.—(1) A mortgage of a term of years absolute shall only be capable of being effected at law either by a sub-demise for a term of years absolute, less by one day at least than the term vested in the mortgagor, and subject to a provision for cesser on redemption, or by a charge by deed expressed to be by way of legal mortgage; and where a licence to sub-demise by way of mortgage is required, such licence shall not be unreasonably refused:

Provided that a first mortgagee shall have the same right to the possession of documents as if his security had been effected by assignment.

This and the next sub-s. prevent mortgages of leaseholds being made by assignment.

Cesser of mortgage terms.

Under s. 116, *inf.*, a mortgage term will become a satisfied term when the mortgage is redeemed.

Licence to mortgage by sub-demise.

"Unreasonably refused": *Bates* v. *Donaldson,* 1896, 2 Q. B. 241; *Re Winfrey & Chatterton,* 1921, 2 Ch. 7; *Re Gibbs,* 1925, Ch. 575. As to the effect of licences: s. 143, *inf.*

Documents.

As to right to possession of documents, see note to last s.; also as to inspection, production and delivery of documents: s. 96, *inf.*

(2) Any purported assignment of a term of years absolute by way of mortgage made after the commencement of this Act shall (to the extent of the estate of the mortgagor) operate as a sub-demise of the leasehold land to the mortgagee for a term of years absolute, but subject to cesser on redemption, in manner following, namely:—

(a) The term to be taken by a first or only mortgagee shall be ten days less than the term expressed to be assigned:

(b) The term to be taken by a second or subsequent mortgagee shall be one day longer than the term vested in the first or other mortgagee

whose security ranks immediately before that of the second or subsequent mortgagee, if the length of the last mentioned term permits, and in any case for a term less by one day at least than the term expressed to be assigned:

and, in this subsection, any such purported assignment as aforesaid includes an absolute assignment with a deed of defeasance and any other assurance which, but for this subsection, would operate in effect to vest the term of the mortgagor in a mortgagee subject to redemption.

Purported assignment in a mortgage.

Each mortgagee will take a sub-term one day longer than the mortgagee immediately in front of him, or, at any rate, the mortgage term will be less by one day than the term created by the lease.

Legal mortgage terms.

Each of the mortgage terms will be legal terms; there is no limit to the number of legal terms which can be created, for a term may be created to take effect in reversion expectant on a longer term: s. 149 (5), *inf.*; a mortgage by sub-demise for a term commensurate with the term granted by a previous mortgage still creates a legal term: *Re Moore and Hulm*, 1912, 2 Ch. 105; it is only necessary that each mortgage term should be less than the term created by the lease.

Leases for lives, &c.

Leases, at a rent or for a fine, for lives or for years terminable with life or on marriage are converted into terms of ninety years terminable with notice by s. 149 (6), *inf.*, hence these leases take effect for "terms of years absolute" (s. 205 (1) (xxvii)) and come within this s., and copyholds for lives are on the same footing: L. P. A., 1922, s. 133.

Perpetually renewable leases.

Perpetually renewable leases are converted into terms of years absolute by L. P. A., 1922, s. 145 and 15th Sch., and come within this s. On the contrary, copyholds perpetually renewable are converted into fee simple estates: L. P. A., 1922, s. 135.

(3) This section applies whether or not the land is registered under the Land Registration Act, 1925, or the mortgage is made by way of sub-mortgage of a term of years absolute, or is expressed to be by way of trust for sale or otherwise.

Registered land.

A proprietor of registered land may charge it by deed: L. R. A., 1925, s. 25; and the charge will take effect as a charge by way of legal mortgage: *ib.*, s. 27 (1); though charges registered before 1926 will take effect by demise (if the land is freehold), or by sub-demise of leasehold land: *ib.*, s. 27 (4).

Sub-mortgages.

Sub-mortgages will be made either by sub-demise of the mortgage term or by charge by way of legal mortgage: s. 87, *inf.* As to sub-mortgages of registered land: L. R. A., 1925, s. 36 and rules thereunder.

Trust deeds for securing debentures.

Trustees for securing debentures cannot take an assignment of the company's leases; the security must be effected by sub-demise or under s. 87, *inf.*

(4) Without prejudice to the provisions of this Act respecting legal and equitable powers, every power to mortgage for or to lend money on mortgage of a term of years absolute by way of assignment shall be construed as a power to mortgage the term by sub-demise for a

term of years absolute or by a charge by way of legal mortgage, or to lend on such security.

As to legal and equitable powers: ss. (1), (7), 7—9, *sup.*

What powers confer power to mortgage by sub-demise.

For instance, the power to mortgage leaseholds given by the Small Dwellings Acquisition Act, 1899, will be construed as a power to mortgage by sub-demise or to charge under s. 87, *inf.*; and see note to s. 85 (3) as to powers of a tenant for life, trustees for sale and personal representatives. Trustees may lend on the security of a term of 200 years: T. A., 1925, s. 5 (1) (a).

Charges by way of legal mortgage.

87.—(1) Where a legal mortgage of land is created by a charge by deed expressed to be by way of legal mortgage, the mortgagee shall have the same protection, powers and remedies (including the right to take proceedings to obtain possession from the occupiers and the persons in receipt of rents and profits, or any of them) as if—

(a) where the mortgage is a mortgage of an estate in fee simple, a mortgage term for three thousand years without impeachment of waste had been thereby created in favour of the mortgagee; and

(b) where the mortgage is a mortgage of a term of years absolute, a sub-term less by one day than the term vested in the mortgagor had been thereby created in favour of the mortgagee.

This s. must be read with ss. 85 and 86, *sup.*

Registration of land charge.

The charge may be registered under L. C. A., 1925, s. 10, Class C. (i), unless it is protected by a deposit of documents of title, and if so registered will give notice to purchasers: s. 198.

Priority of puisne mortgages.

Save in the case of mortgages of registered land (as to which, see L. R. A., 1925, s. 29), or of land within the jurisdiction of a local deeds registry, or of mortgages protected by the deposit of documents relating to the legal estate affected, mortgages made after 1925 rank according to their date of registration as land charges: s. 97, *inf.*

Future practice.

It is conceived that in future mortgages will be effected by a charge under this s.; also that if any licence to make the charge has to be obtained, it must not be unreasonably refused: see s. 86 (1), *sup.* It may be expedient to state when the legal right of redemption ceases, for there is no proviso for redemption: *Williams* v. *Morgan*, 1906, 1 Ch. 804; *Teulon* v. *Curtis*, 1832, Younge, 610.

Land charges.

In addition to ordinary mortgages a land charge of Classes A. and B. (L. C. A., 1925, s. 10) for securing money, created before 1926 or after 1925, when registered, takes effect as if it had been created by a charge by way of legal mortgage, but without prejudice to the priority of the charge: L. C. A., 1925, s. 11.

(2) Where an estate vested in a mortgagee immediately before the commencement of this Act has by virtue of this Act been converted into a term of years absolute or sub-term, the mortgagee may, by a declaration in writing to that effect signed by him, convert the mort-

gage into a charge by way of legal mortgage, and in that case the mortgage term shall be extinguished in the inheritance or in the head term as the case may be, and the mortgagee shall have the same protection, powers and remedies (including the right to take proceedings to obtain possession from the occupiers and the persons in receipt of rents and profits or any of them) as if the mortgage term or sub-term had remained subsisting.

The power conferred by this subsection may be exercised by a mortgagee notwithstanding that he is a trustee or personal representative.

Conversion of mortgages made before 1926 into charges by way of legal mortgage.

Mortgages made before 1926 are converted into mortgages by demise or sub-demise by the 1st Sch., Pts. VII. and VIII., *inf.*, and by L. P. A., 1922, 12th Sch., para. (1) (f), *sup.*

The effect of the declaration creating a charge is to get rid of the term without loss of any rights or priority under the mortgage: see next sub-s. See also T. A., 1925, s. 5 (2). Such a conversion simplifies the subsequent dealings with the charge.

(3) Such declaration shall not affect the priority of the mortgagee or his right to retain possession of documents, nor affect his title to or right over any fixtures or chattels personal comprised in the mortgage.

Possession of documents.

"His right to retain possession of documents": these words were inserted to avoid a doubt arising in consequence of the merger of the mortgage term.

Fixtures.

As to fixtures, see ss. 88 (4) and 89 (4), *inf.*

Realisation of freehold mortgages.

88.—(1) Where an estate in fee simple has been mortgaged by the creation of a term of years absolute limited thereout or by a charge by way of legal mortgage and the mortgagee sells under his statutory or express power of sale—

(a) the conveyance by him shall operate to vest in the purchaser the fee simple in the land conveyed subject to any legal mortgage having priority to the mortgage in right of which the sale is made and to any money thereby secured, and thereupon;

(b) the mortgage term or the charge by way of legal mortgage and any subsequent mortgage term or charges shall merge or be extinguished as respects the land conveyed;

and such conveyance may, as respects the fee simple, be made in the name of the estate owner in whom it is vested.

Statutory power of sale.

This s. must be read with ss. 101 and 104, *inf.*, and subject to the restrictions in s. 103.

An express power of sale will operate under this s. See also s. 101 (3) as to variations of the statutory power. Express power of sale.

The option to convey in the mortgagor's name will not usually be exercised; it shows that s. 7 (4), *sup.*, need not be complied with in this case. Option to use mortgagor's name.

(2) Where any such mortgagee obtains an order for foreclosure absolute, the order shall operate to vest the fee simple in him (subject to any legal mortgage having priority to the mortgage in right of which the foreclosure is obtained and to any money thereby secured), and thereupon the mortgage term, (if any), shall thereby be merged in the fee simple, and any subsequent mortgage term or charge by way of legal mortgage bound by the order shall thereupon be extinguished.

The principle is to convert the mortgagee, who obtains the order, into the estate owner of the land affected by the mortgage, leaving any prior mortgagees to retain either mortgage terms or a legal charge equivalent thereto. Foreclosure orders.

A foreclosure order affecting land in Middlesex or Yorkshire must be registered in the local deeds registry: s. 11, *sup.* For the meaning of "legal mortgage," see s. 205 (1) (xvi), *inf.*

In the case of registered land, see L. R. A., 1925, s. 34 (3).

(3) Where any such mortgagee acquires a title under the Limitation Acts, he, or the persons deriving title under him, may enlarge the mortgage term into a fee simple under the statutory power for that purpose discharged from any legal mortgage affected by the title so acquired, or in the case of a chargee by way of legal mortgage may by deed declare that the fee simple is vested in him discharged as aforesaid, and the same shall vest accordingly.

"Limitations Acts" means the R. P. L. As., 1833, 1837, 1874; see s. 205 (1) (xii), *inf.* Limitation Acts.

Under this sub-s. the mortgagee who executes an enlargement deed, see s. 153 (3), *inf.*, or a vesting deed is in the same position as if a foreclosure order had been made: see last sub-s. and note thereto; the enlargement or vesting deed, as it passes a legal estate, should be registered in a local deeds register. As to registered land, see L. R. A., 1925, s. 35 (2). In addition, a statutory declaration should be made to show how title has been acquired under the statutes. Enlargement of mortgage terms. Statutory declaration.

A person may convey to himself: s. 72, *sup.* Conveyance to self.

(4) Where the mortgage includes fixtures or chattels personal any statutory power of sale and any right to foreclose or take possession shall extend to the absolute or other interest therein affected by the charge.

For the statutory power of sale, see sub-s. (1), *sup.*, and s. 101, *inf.*; as to foreclosure: sub-s. (2), *sup.*; as to taking possession: s. 95 (4), *inf.* The statutory power in s. 101 (1) (i) does not authorise trade machinery to be sold separately from the land: *Re Yates*, 1888, 38 Ch. D. 112; nor does the in- Fixtures and fittings in mortgages of freeholds.

Bills of Sale Acts.

clusion of chattels passing with the land under s. 62, *sup.*, bring the mortgage within the Bills of Sale Acts, 1878 and 1882: *ib.*

Under this sub-s. the mortgage by demise, or charge by way of legal mortgage will, as respects fixtures, take effect as if the property had been conveyed in fee simple or absolutely.

(5) In the case of a sub-mortgage by sub-demise of a long term (less a nominal period) itself limited out of an estate in fee simple, the foregoing provisions of this section shall operate as if the derivative term, if any, created by the sub-mortgage had been limited out of the fee simple, and so as to enlarge the principal term and extinguish the derivative term created by the sub-mortgage as aforesaid, and to enable the sub-mortgagee to convey the fee simple or acquire it by foreclosure, enlargement, or otherwise as aforesaid.

Sub-mortgages of freeholds.

Sub-mortgages of freeholds can be created either by transferring the charge by way of legal mortgage to the sub-mortgagee, or where the principal mortgage is by demise, by a sub-demise: s. 86 (3), *sup.* A sub-mortgage can be protected by the registration of a land charge.

Sub-mortgages by sub-demise.

This sub-s. applies where the sub-mortgage is by sub-demise, and enables the sub-mortgagee to convey the fee simple under sub-s. (1), or to acquire it on foreclosure under sub-s. (2), or, by virtue of the Limitation Acts, to acquire it by an enlargement deed under sub-s. (3).

Sub-mortgages by assignment of legal charges.

If the principal mortgage is a charge by way of legal mortgage, then the sub-mortgagee, being a transferee, will be able to convey, or acquire by foreclosure or vesting deed, the fee simple in the same way as the original mortgagee. In this case an attempt to create a second sub-mortgage would only operate in equity.

(6) This section applies to a mortgage whether created before or after the commencement of this Act, and to a mortgage term created by this Act, but does not operate to confer a better title to the fee simple than would have been acquired if the same had been conveyed by the mortgage (being a valid mortgage) and the restrictions imposed by this Act in regard to the effect and creation of mortgages were not in force, and all prior mortgages (if any) not being merely equitable charges had been created by demise or by charge by way of legal mortgage.

Retrospective operation.

"Mortgage term created by this Act": see 1st Sch., Pt. VII.; as to dispositions of the fee simple operating to create mortgage terms: s. 85 (2).

Validation of mortgages.

The s. does not validate mortgages which are bad *ab initio*, but 1st Sch., Pts. II. and VII., may legalize mortgages which are good in equity.

As to the restrictions, see ss. 85 and 86; and as to the overriding effect of the power of sale: s. 104 (1), *inf.*, and sub-s. (1) (a) and (b), *sup.*

The overreaching of equitable charges.

"Not being merely equitable charges": only mortgages which before 1926 were made in the same form as a legal mortgage are converted into legal mortgages by demise or sub-demise by 1st Sch., Pts. VII. and VIII.

Whether or not a mere equitable charge will be overreached will depend, if the charge is made before 1926, on whether the mortgagee had notice when he advanced the money; if the charge is made after 1925, on whether a land charge has been registered to protect it: L. C. A., 1925, s. 10, Class C. (iii). As to "puisne mortgages," see s. 97, *inf.*; 1st Sch., Pt. VII., para. 6; L. C. A., 1925, s. 10, Class C. (i).

Realisation of leasehold mortgages.

89.—(1) Where a term of years absolute has been mortgaged by the creation of another term of years absolute limited thereout or by a charge by way of legal mortgage and the mortgagee sells under his statutory or express power of sale,—

(a) the conveyance by him shall operate to convey to the purchaser not only the mortgage term, if any, but also (unless expressly excepted with the leave of the court) the leasehold reversion affected by the mortgage, subject to any legal mortgage having priority to the mortgage in right of which the sale is made and to any money thereby secured, and thereupon

(b) the mortgage term, or the charge by way of legal mortgage and any subsequent mortgage term or charge, shall merge in such leasehold reversion or be extinguished unless excepted as aforesaid;

and such conveyance may, as respects the leasehold reversion, be made in the name of the estate owner in whom it is vested.

Where a licence to assign is required on a sale by a mortgagee, such licence shall not be unreasonably refused.

This s. only applies to mortgages or legal charges of "terms of years absolute": s. 205 (1) (xxvii).

See also ss. 101, 103, 104 (power of sale); s. 91 (powers of the court).

Realisation of leasehold mortgages.

This s. restores the principle adopted in Lord Cranworth's Act (23 & 24 Vict. c. 145, repealed by C. A., 1881), but goes further by requiring the mortgagee to assign the leasehold reversion unless the court gives leave to assign the mortgage term only; thus doing away with the need for conferring by the mortgage deed any irrevocable power to assign the reversion, save in the case referred to in sub-s. (6).

Conveyance of leasehold reversion.

The court will not, it is conceived, grant leave to convey only the sub-term created by the mortgage, unless by so doing a larger price could be obtained, on the ground that some liability on the covenants could be thereby evaded, or, on a sale in lots of part of the property comprised in the lease, to be effected by demise at equitably apportioned rents, it is expedient that the mortgagee should retain power to convey the entirety of the land, subject to and with the benefit of the leases so granted, to another purchaser.

"With the leave of the court."

If the mortgagee can convey the leasehold reversion then a purchaser can insist on his conveying it: s. 42.

Rights of purchaser.

"Subject to any legal mortgage."

"Legal mortgage": see s. 205 (1) (xvi). Whether or not the conveyance will defeat an equitable charge depends on whether, if the equitable charge was made before 1926, the money was advanced under the mortgage, in right of which the sale is made, without notice of the equity; if the equitable charge is made after 1925, then it will be defeated unless a land charge was registered when the legal mortgage was completed: L. C. A., 1925, s. 10, Class C. (i) and (iii). A "puisne mortgage" made before 1926 remains, in effect, an equitable charge (1st Sch., Pt. VIII., para. 5) though made legal by that Sch. until a land charge is registered: L. C. A., 1925, s. 10 (7); such registration will not give the puisne mortgage priority over the mortgage under which the sale is made unless it originally had such priority: 1st Sch., Pt. VIII., para. 8.

"Puisne mortgage."

Merger or cesser of mortgage terms.

See also as to cesser of mortgage terms: s. 116. One of the original objections to mortgages by demise or sub-demise was that the terms were unnecessarily kept on foot and so complicated the title. This will no longer be possible; see also s. 5, *sup.*, and 1st Sch., Pt. II., para. 1, as to satisfied terms, including terms having a leasehold reversion.

Conveyance in name of mortgagor.

As to conveying as if under a power of attorney, *cf.* ss. 7 (4), 8 (1); under s. 89 (1) a mortgagee when selling will generally convey in his own name.

Licence to mortgagee "unreasonably refused."

As to unreasonably refusing a licence to assign, see note to s. 146 (8), *inf.* If no licence to charge by way of legal mortgage is required, the subsequent assignment by the mortgagee cannot be unreasonably prohibited.

(2) Where any such mortgagee obtains an order for foreclosure absolute, the order shall, unless it otherwise provides, operate (without giving rise to a forfeiture for want of a licence to assign) to vest the leasehold reversion affected by the mortgage and any subsequent mortgage term in him, subject to any legal mortgage having priority to the mortgage in right of which the foreclosure is obtained and to any money thereby secured, and thereupon the mortgage term and any subsequent mortgage term or charge by way of legal mortgage bound by the order shall, subject to any express provision to the contrary contained in the order, merge in such leasehold reversion or be extinguished.

Effect of foreclosure order as respects mortgages by sub-demise.

"Any such mortgagee," *i.e.*, a mortgagee by sub-demise of a term of years absolute or a legal chargee (s. 87) of such a term.

Merger of mortgage terms.

Thus, save in the case mentioned in sub-s. (6), the leasehold reversion will vest in the mortgagee, who, as in the case of a purchaser, becomes the estate owner free from a right of redemption. No licence to assign is required, though the order operates (s. 9) as a conveyance by the mortgagor, the former estate owner. Here, again, the mortgage terms will be extinguished. It is unlikely that the court will see reason for keeping a mortgage term on foot, but the unlikely event sometimes happens, hence power to keep it alive is reserved.

(3) Where any such mortgagee acquires a title under the Limitation Acts, he, or the persons deriving title under him, may by deed declare that the leasehold reversion affected by the mortgage and any mortgage term affected by the title so acquired shall vest in him, free from any right of redemption which is barred, and

the same shall (without giving rise to a forfeiture for want of a licence to assign) vest accordingly, and thereupon the mortgage term, if any, and any other mortgage term or charge by way of legal mortgage affected by the title so acquired shall, subject to any express provision to the contrary contained in the deed, merge in such leasehold reversion or be extinguished.

"Limitation Acts": s. 205 (1) (xii).

Title by possession.

This is a new form of assurance, a person can vest land in himself: s. 72. The assurance comes within s. 9 (1) (b) or (e). See also note to s. 88 (3), it operates as a conveyance of a legal estate and must be registered in any local deeds registry. No licence to assign is required.

Deed to vest the leasehold reversion, &c.

"Subject to any express provision, &c." It will seldom, if ever, be necessary to keep alive the mortgage term, for subsequent legal mortgages are barred.

By s. 5, *sup.*, a term derived out of a leasehold reversion will merge when satisfied, rectifying the omission referred to in *Re Moore & Hulm*, 1912, 2 Ch. 105.

Satisfied terms.

(4) Where the mortgage includes fixtures or chattels personal any statutory power of sale and any right to foreclose or take possession shall extend to the absolute or other interest therein affected by the charge.

See note to s. 88 (4); also 1 Prid., 22nd ed. Mortgages (Forms) covenant in public-house mortgage.

Fixtures in mortgage of leaseholds.

This sub-s. makes it clear that the interest of the mortgagor can be disposed of or acquired, even though the mortgage takes the form of a charge by way of legal mortgage.

(5) In the case of a sub-mortgage by sub-demise of a term (less a nominal period) itself limited out of a leasehold reversion, the foregoing provisions of this section shall operate as if the derivative term created by the sub-mortgage had been limited out of the leasehold reversion, and so as (subject as aforesaid) to merge the principal mortgage term therein as well as the derivative term created by the sub-mortgage and to enable the sub-mortgagee to convey the leasehold reversion or acquire it by foreclosure, vesting, or otherwise as aforesaid.

For the purposes of sale, foreclosure, or acquisition of title by possession, the term created by the sub-mortgage, which of necessity is derived out of the principal mortgage term (see s. 86, *sup.*), is treated as if it had been the principal mortgage term, and the latter is placed behind it so as to merge.

Sub-mortgages of leasehold mortgages.

The sub-s. is not in terms required if the sub-mortgage is created as a charge by way of legal mortgage, for under s. 87 (1) (b) the same result is obtained by reference to the provisions affecting mortgages by sub-demise.

Sub-mortgage by way of legal charge.

If the principal mortgage is a charge by way of legal mortgage, then the sub-mortgage can be created by a transfer of the legal charge. See also note to s. 88 (5), *sup.*

Sub-mortgage by transfer of legal charge.

(6) This section takes effect without prejudice to any incumbrance or trust affecting the leasehold reversion which has priority over the mortgage in right of which the sale, foreclosure, or title is made or acquired, and applies to a mortgage whether executed before or after the commencement of this Act, and to a mortgage term created by this Act, but does not apply where the mortgage term does not comprise the whole of the land included in the leasehold reversion unless the rent (if any) payable in respect of that reversion has been apportioned as respects the land affected, or the rent is of no money value or no rent is reserved, and unless the lessee's covenants and conditions (if any) have been apportioned, either expressly or by implication, as respects the land affected.

Priorities.

The priorities of trusts and incumbrances paramount to the mortgage in right of which title is made or acquired are thus preserved.

Retrospective.

The s. applies to mortgages made before or after 1926, and to mortgage terms created by 1st Sch., Pt. VIII.

Mortgages of part of land in lease, when not affected.

The s. does not apply to mortgages of part of land comprised in a lease at a rent (not nominal) where the rent has not been apportioned. If it has been so apportioned, then under s. 141 the covenants would be apportioned "by implication." It was in consequence of the want of this exception that objection was taken to the power to dispose of the leasehold reversion formerly conferred by Lord Cranworth's Act.

Apportionment "by implication."

Irrevocable power of attorney when required.

Where a mortgage of leaseholds is made to which this s. does not apply an irrevocable power of attorney should be given to the mortgagee and the persons deriving title under him (s. 128, *inf.*) to convey the leasehold reversion and to acquire the same on foreclosure or possession in like manner as if this s. applied. See also note to s. 91, *inf.*

Realisation of equitable charges by the court.

90.—(1) Where an order for sale is made by the court in reference to an equitable mortgage on land (not secured by a legal term of years absolute or by a charge by way of legal mortgage) the court may, in favour of a purchaser, make a vesting order conveying the land or may appoint a person to convey the land or create and vest in the mortgagee a legal term of years absolute to enable him to carry out the sale, as the case may require, in like manner as if the mortgage had been created by deed by way of legal mortgage pursuant to this Act, but without prejudice to any incumbrance having priority to the equitable mortgage unless the incumbrancer consents to the sale.

Order for sale of land affected by equitable mortgage.

"Equitable mortgage": see definition of "mortgage": s. 205 (1) (xvi). As to circumstances in which an order for sale may be made, see next s. and note thereto. "Pursuant to this Act": see s. 87, *i.e.*, a legal charge by deed.

As to vesting orders: s. 9, *sup.* The power to convert an equitable mortgage into a legal mortgage, when exercised, will enable the mortgagee to make title out of court. This will be convenient after an order for sale has been made and the sale has proved abortive in regard to any part of the property. Vesting orders. Sales effected out of court.

If the land is in a register county the order must be registered in the local deeds registry, for it operates to transfer or create a legal estate. If the order affects registered land an application must be made to the registrar to make the consequential rectification of or entry in the register. The order should, unless it only affects registered land, be registered under L. C. A., 1925, s. 6. Registration of order.

The primary remedies of an equitable mortgagee are foreclosure and the appointment of a receiver: 2 Coote, 7th ed., 946, 1014; but under s. 91, *inf.*, he can obtain an order for sale in the foreclosure proceedings. Remedies of equitable mortgages.

As to mortgages by deposit: s. 13, *sup.* Mortgages by deposit.

(2) This section applies to equitable mortgages made or arising before or after the commencement of this Act, but not to a mortgage which has been over-reached under the powers conferred by this Act or otherwise.

Though the s. applies to mortgages made before or after 1926, it is obvious that where a mortgagee has sold, foreclosed, or acquired a title by possession, this will defeat the claims of an equitable mortgagee unless his charge is paramount and is protected by notice before 1926, or by a land charge after 1925; see notes to ss. 88 and 89, *sup.* Retrospective. Equitable mortgage overreached.

Equitable charges can also be overreached by the estate owner of the land affected: ss. 2 and 28, *sup.*; S. L. A., 1925, ss. 21 and 72; Ad. of E. A., 1925, ss. 36 and 39; L. C. A., 1925, ss. 10, Class C. and D. (i), 13—15.

91.—(1) Any person entitled to redeem mortgaged property may have a judgment or order for sale instead of for redemption in an action brought by him either for redemption alone, or for sale alone, or for sale or redemption in the alternative. Sale of mortgaged property in action for redemption or foreclosure.

(2) In any action, whether for foreclosure, or for redemption, or for sale, or for the raising and payment in any manner of mortgage money, the court, on the request of the mortgagee, or of any person interested either in the mortgage money or in the right of redemption, and, notwithstanding that—

(a) any other person dissents; or

(b) the mortgagee or any person so interested does not appear in the action;

and without allowing any time for redemption or for payment of any mortgage money, may direct a sale of the mortgaged property, on such terms as it thinks fit, including the deposit in court of a reasonable sum fixed by the court to meet the expenses of sale and to secure performance of the terms.

(3) But, in an action brought by a person interested in the right of redemption and seeking a sale, the court may, on the application of any defendant, direct the plaintiff to give such security for costs as the court thinks fit, and may give the conduct of the sale to any defendant, and may give such directions as it thinks fit respecting the costs of the defendants or any of them.

(4) In any case within this section the court may, if it thinks fit, direct a sale without previously determining the priorities of incumbrancers.

(5) This section applies to actions brought either before or after the commencement of this Act.

(6) In this section "mortgaged property" includes the estate or interest which a mortgagee would have had power to convey if the statutory power of sale were applicable.

(7) For the purposes of this section the court may, in favour of a purchaser, make a vesting order conveying the mortgaged property, or appoint a person to do so, subject or not to any incumbrance, as the court may think fit; or, in the case of an equitable mortgage, may create and vest a mortgage term in the mortgagee to enable him to carry out the sale as if the mortgage had been made by way of legal mortgage.

Sale of mortgaged property in action for redemption or foreclosure.

This s. reproduces the C. A., 1881, s. 25, with amendments. Sub-s. (6) is new; it refers to ss. 88 and 89, *sup.* The exception in s. 89 (6) can be met by an order of the court.

The last four lines of sub-s. (7) are new; they repeat the power conferred by s. 90, *sup.*: see note thereto. "By way of legal mortgage": s. 87. As to dealings with minerals and surface separately: s. 92, *inf.*

Sales out of court.

Orders for sale under this s.

An order for sale may be made under this s. in a foreclosure or redemption action at any time before the action is concluded by a foreclosure absolute: *Union B. of L.* v. *Ingram*, 1882, 20 Ch. D. 463 (mortgagee's request; security insufficient); on an interlocutory application before trial of the action: *Woolley* v. *Colman*, 1882, 21 *ib.* 169 (mortgagor's request); or even on the motion for foreclosure absolute where a summons for further time has been previously taken out: *Weston* v. *Davidson*, 1882, W. N. 28 (mortgagor's request). It can be made at the request of, and the conduct given to, the mortgagor, though the mortgagee's statutory power of sale has arisen: *Brewer* v. *Square*, 1892, 2 Ch. 111.

The owner of, or any incumbrancer on, an incumbered estate can under this s. bring an action for sale and application of the proceeds (see note to s. 50), but before commencing an action for redemption or sale he should be certain that he can provide the requisite deposit or security for costs, otherwise he may find himself foreclosed.

Course where sale asked by mortgagee or mortgagor.

If the mortgagee asks for a sale under this s., the course of proceeding will be much the same as before 1881, in a similar case. If the mortgagor asks for a sale instead of being foreclosed as defendant, or bound to redeem as plaintiff, the course of the proceeding is new. In *Woolley* v. *Colman*, 1882, 21 Ch. D. 169, the owner of the equity of redemption was plaintiff, the property

being subject to several mortgages. A sale was directed at a reserve price sufficient to pay the two first mortgagees, who opposed a sale, and with the assent of the subsequent mortgagees the conduct of the sale was given to the mortgagor, who was ordered to give security for the costs of it. Where the mortgagor was defendant, and had the conduct of the sale, he was not ordered to give security for costs: *Davies* v. *Wright*, 1886, 32 Ch. D. 220; but see *Brewer* v. *Square*, *sup.* In both these cases the sale was allowed to be made out of court, but the proceeds were directed to be paid into court. In *Wade* v. *Wilson*, 1882, 22 Ch. D. 235, a foreclosure action, in which one of the defendants, the mortgagor, did not appear, and the other, the second mortgagee, made default in pleading, the usual account was directed, and then, after one month from the certificate (see *Green* v. *Biggs*, *inf.*), a sale was ordered of a sufficient part of the property to pay the amount found due to the plaintiff. In *Oldham* v. *Stringer*, 1884, 33 W. R. 251, there was a deposit of deeds without any memorandum, and a sale was ordered instead of foreclosure (mortgagee's request; security insufficient). In *Norman* v. *Beaumont*, 1893, W. N. 45, a foreclosure action by first mortgagees, a sale was ordered at the request of, and the conduct was given to, the fourth mortgagee, on his paying a deposit into court. A sale was ordered also in *Green* v. *Biggs*, 1885, 52 L. T. 680, and in *Jones* v. *Harris*, 1887, W. N. 10 (in each case at mortgagee's request; three months allowed from certificate), but was refused in *Merchant Banking Co.* v. *London & Hanseatic Bank*, 1886, 55 L. J. Ch. 479 (mortgagor's request; but sale, at a reserve price to cover the mortgage debt, was likely to be abortive); *Hopkinson* v. *Miers*, 1889, 34 Sol. J. 128 (mortgagee's request; property part of family estate; evidence of mortgagor's solvency, but none of security being insufficient); and *Smithett* v. *Hesketh*, 1890, 44 Ch. D. 161, at p. 163 (mortgagor's request; no evidence of value of the property); also in *Provident Clerks, &c. Association* v. *Lewis*, 1892, 62 L. J. Ch. 89.

Mortgage by deposit.

If after judgment directing an account and payment and in default of payment, sale, it appears that the amount due on the account is less than the value of the property, the court may order foreclosure notwithstanding the conditional order for sale: *Lloyds Bank, Ltd.* v. *Colston*, 1912, 106 L. T. 420.

Foreclosure may be ordered notwithstanding order for sale.

When an order is made for sale out of court, it should be prefaced with the declaration required by R. S. C., O. 51, r. 1A, that the judge is satisfied, by evidence, that all persons interested are before the court, or bound by the order: *Cumberland, &c. Co.* v. *Maryport, &c. Co.*, 1892, 1 Ch. 92. For forms of order, see Seton, 7th ed. 1842—1845.

Sale out of court.

Forms of order.

The court cannot under this s. authorise a mining lease as a sale *pro tanto*: *Stamford* v. *Keeble*, 1913, 2 Ch. 96.

Mining lease.

92. Where a mortgagee's power of sale in regard to land has become exercisable but does not extend to the purposes mentioned in this section, the court may, on his application, authorise him and the persons deriving title under him to dispose—

Power to authorise land and minerals to be dealt with separately.

(a) of the land, with an exception or reservation of all or any mines and minerals, and with or without rights and powers of or incidental to the working, getting or carrying away of minerals; or

(b) of all or any mines and minerals, with or without the said rights or powers separately from the land;

and thenceforth the powers so conferred shall have effect as if the same were contained in the mortgage.

"Has become exercisable": see s. 103, *inf.*, as respects mortgages with a power of sale under this Act; but the expression "mortgagee's power of sale" is general, hence this s. applies whenever there is a power to sell.

Relates to certain mortgages.

This s. reproduces T. A., 1893, s. 44 (as amended by T. A., 1894, s. 3), only as respects certain mortgages. The aid of the s. is not required where the mortgage by deed is made after 1911: s. 101 (2) (ii), *inf.*; or where C. A., 1911, s. 4 (1) (ii), has been made to apply to a mortgage made before 1912. Nor is any order under the s. required to assist a tenant for life to deal with the surface or minerals of settled land: S. L. A., 1925, s. 50; nor trustees for sale, who have the powers of a tenant for life: s. 28, *sup.*; nor personal representatives, who, as having the powers of trustees for sale, also have the powers of a tenant for life: Ad. of E. A., 1925, s. 39. Indeed trustees have power under T. A., 1925, s. 12 (2), to sell or dispose of land, or any part thereof, whether the division is horizontal, vertical, or made in any other way; this is in addition to their power to deal with surface and minerals separately.

When an order not required.

Where orders are required.

Orders under this s. will be required where the mortgage is not made by deed (*e.g.*, where a mortgage term is by order vested in an equitable mortgagee by deposit under ss. 90, 91, *sup.*) and s. 101 (2) (ii) does not apply or has not been made applicable by agreement.

"Contained in the mortgage."

The last two lines of the s. are new. The order will authorise the mortgagee "and the persons deriving title under him" to exercise the powers mentioned in the s. As to taking effect as if "contained in the mortgage," see s. 101 (3), (4).

The proceedings must be served on the mortgagor: *Re Hirst*, 1890, 45 Ch. D. 263. For form of order: Seton, 7th ed. 1679.

Restriction on consolidation of mortgages.

93.—(1) A mortgagor seeking to redeem any one mortgage is entitled to do so without paying any money due under any separate mortgage made by him, or by any person through whom he claims, solely on property other than that comprised in the mortgage which he seeks to redeem.

This subsection applies only if and as far as a contrary intention is not expressed in the mortgage deeds or one of them.

(2) This section does not apply where all the mortgages were made before the first day of January, eighteen hundred and eighty-two.

(3) Save as aforesaid, nothing in this Act, in reference to mortgages, affects any right of consolidation or renders inoperative a stipulation in relation to any mortgage made before or after the commencement of this Act reserving a right to consolidate.

Consolidating mortgages.

Sub-ss. (1) and (2) reproduce C. A., 1881, s. 17 (1) and (3), though the word "solely" before "on property" has been inserted to make the meaning clearer.

Sub-s. (3) gives effect to s. 17 (2) and at the same time shows that the Act does not, in other respects, affect consolidation rights.

A tenant for life has power to effect consolidating mortgages and give additional security: S. L. A., 1925, s. 70; hence trustees for sale and personal representatives have corresponding powers.

How consolidation may still arise.

This s. does not in terms repeal any previously existing rule of law, but it confers on the mortgagor a right, in opposition to a previously existing rule, and at the same time permits him to waive that right. In cases where the s. does not apply, the equitable rules as to the consolidation of mortgages will still be applicable: *Hughes* v. *Britannia, &c. Society,* 1906, 2 Ch. 607, 611.

Equitable rules as to consolidation.

Under these rules where separate mortgages over two or more properties created by the same person (*Cummins* v. *Fletcher,* 1880, 14 Ch. D. 699; *Sharp* v. *Rickards,* 1909, 1 Ch. 110) as mortgagor have become absolute and are vested in the same person (*Riley* v. *Hall,* 1898, 79 L. T. 244) as mortgagee, the mortgagor will not be allowed to redeem one without at the same time discharging the other or others. This will be so both in cases where the mortgages were to the same mortgagee in the first instance, and where they have subsequently become united in title by transfer.

The rule has also been extended so as to bind the assignees of the equity of redemption in one or both of the mortgaged properties (for the sake of simplicity of statement two only are assumed) in cases where the mortgages were originally to the same person, or have become united in title before the assignment: *Jones* v. *Smith,* 1794, 2 Ves. 372, 377. The mortgagee will be allowed to consolidate against the assignee of both equities of redemption, even if the mortgages only become united in title after the assignment: *Pledge* v. *White,* 1896, A. C. 187; but not against the assignee of the equity of redemption in one property only, where the mortgage of the other property has been created after the assignment: *Jennings* v. *Jordan,* 1880, 6 A. C. 698; or where the two mortgages have only become united in title after the assignment: *Harter* v. *Colman,* 1882, 19 Ch. D. 630.

The effect of the rule is not actually to charge both debts on each property; hence it does not apply where one of the properties has been destroyed: *Re Raggett,* 1880, 16 Ch. D. 117. See also Fisher, Mortg., 6th ed. 617 *et seq.*

Several mortgages on same property.

The s. does not apply where there are several mortgages on the same property, though one of them comprises other property: *Re Salmon,* 1903, 1 K. B. 147; and see the word "solely."

"Seeking to redeem."

The words "seeking to redeem" are general, and apply not only to the case of a mortgagor or subsequent incumbrancer (*Hughes* v. *Britannia, &c. Society, sup.*) giving notice to pay off, but also to the case of a redemption suit, or of a payment under an order in a foreclosure suit. Before 1882, the right of a mortgagee, who had exercised his power of sale over one security, to apply the surplus proceeds to make good the deficiency of another security, depended upon his right to consolidate the two securities. Hence, it is conceived that now he cannot so apply such surplus proceeds, unless he has the right to consolidate, although in such a case the mortgagor is not "seeking to redeem." The point is of practical importance when the equities are vested in different persons, or in a trustee in bankruptcy.

Covenant to execute legal mortgage.

Where an equitable mortgage, which does not exclude the operation of this s., contains a covenant to execute a legal mortgage with such provisions as the mortgagee may require, the mortgagee is not entitled to a legal mortgage containing a clause excluding this s. as that would enlarge the subject-matter of the security: *Farmer* v. *Pitt,* 1902, 1 Ch. 954.

Notice to pay off one mortgage.

Where this s. is excluded, a mortgagee does not lose his right to consolidate by giving notice under s. 103 to pay off one of the mortgages in order to acquire a power of sale: *Griffith* v. *Pound,* 1890, 45 Ch. D. 553.

Costs of foreclosure of two separate mortgages.

Where this s. applies, the costs of an action to foreclose two estates separately mortgaged to the same mortgagee by the same mortgagor to secure separate sums must be apportioned rateably between the two properties: *De Caux* v.

Skipper, 1886, 31 Ch. D. 635, overruling *Clapham* v. *Andrews,* 1884, 27 Ch. D. 679.

Effect of sub-s (2).

The effect of sub-s. (2) is to reserve to a mortgage made before 1882 its old right in equity to become consolidated with another mortgage, also made before 1882.

S. should not be excluded.

In ordinary cases the mortgagee will be content to rely on the one security taken by him as being sufficient, and will not reserve the right to consolidate. In special cases (loans to builders), where it is intended to make numerous advances, the right to consolidate will be reserved. Where the contract is for a single loan on specific property, there can be no more obligation on the solicitor of the lender to obtain a further charge on other property contingent merely on its becoming vested in his client as mortgagee, than to take a charge on all other present and future property of the mortgagor.

Registered chargee.

The rights of a registered chargee under L. R. A., 1925, s. 25, are the same as any other mortgagee: *ib.* ss. 27, 34.

Tacking and further advances.

94.—(1) After the commencement of this Act, a prior mortgagee shall have a right to make further advances to rank in priority to subsequent mortgages (whether legal or equitable)—

(a) if an arrangement has been made to that effect with the subsequent mortgagees; or

(b) if he had no notice of such subsequent mortgages at the time when the further advance was made by him; or

(c) whether or not he had such notice as aforesaid, where the mortgage imposes an obligation on him to make such further advances.

This subsection applies whether or not the prior mortgage was made expressly for securing further advances.

As to mortgages by deposit: s. 13, *sup.;* as to "puisne mortgages," see s. 97; 1st Sch., Pt. VII., para. 6; Pt. VIII., para. 5; L. C. A., 1925, s. 10 (1), Class C. (i) (7).

Rights to make further advances.

"If an arrangement has been made, &c.": in this case the subsequent incumbrancers have notice, it is merely a question of postponing their charges to further charges; some limit would no doubt be agreed.

"If he had no notice, &c.": see sub-s. (2), *inf.*, and note thereto.

Though there can be no order for specific performance of a contract to lend money: Fry, 3rd ed. 24; a claim for damages on breach might possibly be supported if consideration is given and the borrower incurs a liability on the faith of the contract.

Where the mortgage contains a contract to make further advances no loan can be effected with a subsequent mortgagee with notice of the contract unless a limit is imposed on the amount of the advances to be made.

In cases within paras. (a) and (c) the mortgage would expressly provide "for securing further advances," but para. (b) would cover a case where a deed of further charge was given to secure a further advance (but in this case the usual searches must be made before the money is advanced: sub-s. (2), *inf.*), as well as a provision in the original mortgage for securing future advances. Para. (c) overrules *West* v. *Williams,* 1899, 1 Ch. 132, on this point.

As to securing further advances on the security of registered land: L. R. A., 1925, s. 30. As to mortgages by deposit of certificates: *ib.* s. 66. Registered land.

(2) In relation to the making of further advances after the commencement of this Act a mortgagee shall not be deemed to have notice of a mortgage merely by reason that it was registered as a land charge or in a local deeds registry, if it was not so registered at the date of the original advance or when the last search (if any) by or on behalf of the mortgagee was made, whichever last happened.

This subsection only applies where the prior mortgage was made expressly for securing a current account or other further advances.

Registration of a land charge gives notice where this s. does not apply: s. 198, *inf.*; see also L. C. A., 1925, ss. 10 to 15. Notice under a land charge.

Registration of a memorial creating or transferring a legal estate in Middlesex and Yorkshire gives notice: s. 197, *inf.*, save where the above sub-s. applies. Notice under memorials registered in Middlesex and Yorkshire.

Independently of this sub-s. and sub-s. (1) (b), *sup.*, no further advance could be made under a mortgage (whether legal or by deposit) to secure a current account or further advances after the mortgagee had notice of a subsequent incumbrance: *Hopkinson* v. *Rolt*, 1861, 9 H. L. Cas. 514; while ss. 197, 198, *inf.* (independently of the exception), would have rendered it necessary for a banker to search before each cheque, creating an overdraft, was cashed. This sub-s., in effect, re-establishes the principle that the mortgagee making the further advance is not to be deemed to have notice if he does not search, provided that the proper searches were made when the mortgage was created: *cf. Le Neve* v. *Le N.*, 1748, 3 Atk. 646, 655 (a Middlesex case). The principle so enacted will apply to Yorkshire as well as to any other part of England. Mortgages to secure current accounts or further advances.

So far, if at all, as the Yorkshire Registries Act, 1884, s. 14 (priority of assurance according to date of registration), s. 16 (abolition of tacking) may be inconsistent with this s., these provisions will be overruled. Yorkshire.

(3) Save in regard to the making of further advances as aforesaid, the right to tack is hereby abolished:

Provided that nothing in this Act shall affect any priority acquired before the commencement of this Act by tacking, or in respect of further advances made without notice of a subsequent incumbrance or by arrangement with the subsequent incumbrancer.

The total abolition of the right to tack would be consistent with the Yorkshire Registries Act, 1884, s. 16, but the right to make further advances, without searching, is not in all respects in accordance with that Act, though it is required for banking purposes. Abolition of right to tack.

As to the old law respecting tacking: 2 Coote, 7th ed. 1239 *et seq.*; Elph. Intro., 7th ed. 280, 282; Goodeve R. P., 5th ed. 403, 404. Old law as to tacking.

(4) This section applies to mortgages of land made before or after the commencement of this Act, but not to charges registered under the Land Registration Act, 1925, or any enactment replaced by that Act.

Retrospective.

Thus, though the mortgage was made before 1926, the mortgagee will, after 1925, acquire the right to make further advances with safety in accordance with this s.

Registered charges.

As to registered charges, see L. R. A., 1925, s. 27 (4), which applies the principles applicable to charges created after 1926 to those which were created under the L. T. A., 1875 and 1897; the register will, on the occasion of a first dealing, be rectified to secure that entries will be the same as if the title had been registered after 1925: L. R. A., 1925, s. 2 (1). The s. relating to further charges (s. 30) will apply whenever the charge was registered.

Obligation to transfer instead of reconveying, and as to right to take possession.

95.—(1) Where a mortgagor is entitled to redeem, then subject to compliance with the terms on compliance with which he would be entitled to require a reconveyance or surrender, he shall be entitled to require the mortgagee, instead of reconveying or surrendering, to assign the mortgage debt and convey the mortgaged property to any third person, as the mortgagor directs; and the mortgagee shall be bound to assign and convey accordingly.

This sub-s. reproduces C. A., 1881, s. 15.

"Mortgagor" and "mortgagee": see s. 205 (1) (xvi).

"Incumbrance" and "incumbrancer": *ib.* (vii).

(2) The rights conferred by this section belong to and are capable of being enforced by each incumbrancer, or by the mortgagor, notwithstanding any intermediate incumbrance; but a requisition of an incumbrancer prevails over a requisition of the mortgagor, and, as between incumbrancers, a requisition of a prior incumbrancer prevails over a requisition of a subsequent incumbrancer.

This sub-s. reproduces the amendment in C. A., 1882, s. 12.

When transfer of an equitable charge necessary.

This s. applies to an equitable as well as a legal mortgage. Though an equitable charge is discharged by mere payment by the owner of the equity of redemption, and no surrender is necessary, yet it is not so discharged if paid by a third party, and if so paid, a transfer can be required under this s.; see *Everitt* v. *Automatic Weighing Machine Co.*, 1892, 3 Ch. 506. But *qu.* if the s. applies to a Building Society mortgage: *Re Rumney & Smith*, 1897, 2 Ch. 351; *semble*, it applies if the definition of "society" in the mortgage includes its assigns: *Sun Soc.* v. *Western Soc.*, 1920, 2 Ch. 144. As to keeping a mortgage alive: s. 116, *inf.*; as to an endorsed receipt operating as a transfer: s. 115 (2).

Endorsed receipts.

Redemption by tenant for life.

"The terms."

A tenant for life who has obtained an order to redeem on terms which prevent interest and further costs running up against the remainderman, will be held to those terms, and cannot under this s. require transfer to a third person: *Alderson* v. *Elgey*, 1884, 26 Ch. D. 567. The words "the terms" in sub-s. (1)

mean "the terms" generally, not merely as to the amount of money payments: see *S. C.* at p. 573.

Transfer pending foreclosure action.

It has been doubted whether, in a foreclosure action, a transfer, under this s., to a party outside the suit should be allowed: *Smithett* v. *Hesketh*, 1890, 44 Ch. D. 161; but the s. expressly gives the right to have a transfer made to *any third* person, the object being that if the subsequent incumbrancer could not provide money to take a transfer and stop foreclosure he might procure some one else to do so, otherwise the s. is practically useless.

Successive incumbrancers.

For the rights under this s., of successive incumbrancers and the mortgagor, as between themselves: *Teevan* v. *Smith*, 1882, 20 Ch. D. 724.

Consent of mesne incumbrancers.

A mortgagee cannot safely transfer his mortgage to the mortgagor or his nominee without the consent of the mesne incumbrancers of which he has notice: *Re Magneta Time Co., Ltd.*, 1915, 84 L. J. (Ch.) 814; 1915, W. N. 318; following Fisher, Mortg., 6th ed. 989.

(3) The foregoing provisions of this section do not apply in the case of a mortgagee being or having been in possession.

Why mortgagee in possession excepted.

The reason for excepting a mortgagee "being or having been in possession" (see *Re Prytherch*, 1889, 42 Ch. D. at p. 599; *Hall* v. *Heward*, 1886, 32 *ib.* at p. 435; *Gaskell* v. *Gosling*, 1896, 1 Q. B. 669, 691) is, that once having taken possession he remains liable for all that he might, but for his wilful default, have received, and is also liable in respect of working minerals and other matters. He remains liable after transfer for the acts and defaults of the transferee, except where the transfer is directed by the court: *Hall* v. *Heward*, *sup.* Having once gone into possession he remains liable though he afterwards gives up possession: see *Re Prytherch*, *sup.* (except in the case of a second or subsequent mortgagee, who might go into possession and be ousted by a prior mortgagee). Consequently, though the request of the mortgagor to transfer might operate as a release by him, the liability to mesne incumbrancers would still continue.

(4) Nothing in this Act affects prejudicially the right of a mortgagee of land whether or not his charge is secured by a legal term of years absolute to take possession of the land, but the taking of possession by the mortgagee does not convert any legal estate of the mortgagor into an equitable interest.

Effect of mortgagee taking possession.

This sub-s. is inserted *abundanti cautelâ*, to show that in s. 1 (1) (a) "fee simple absolute in possession" is there used as opposed to "fee simple in remainder"; compare the definition of "possession" in s. 205 (1) (xix).

It also makes it clear that a chargee by way of legal mortgage can take possession.

Conveyances operating to pass the possession.

Though under ss. 51 and 149 a conveyance or demise will operate to pass "the possession," this no more puts a mortgagee into possession, so as to render him liable to account, than a mortgage by an appointment, operating under the Statute of Uses, did so when made before 1926.

(5) This section applies to mortgages made either before or after the commencement of this Act, and

takes effect notwithstanding any stipulation to the contrary.

Mortgagor includes puisne mortgagee.

In applying this and ss. 93, 97, it must be remembered that mortgagor includes any person deriving title under the original mortgagor, or entitled to redeem: s. 205 (xvi).

Decisions cancelled.

The decisions cancelled by the corresponding s. of the C. A., 1881, were *Smith* v. *Green,* 1844, 1 Coll. 563; *Dunstan* v. *Patterson,* 1847, 2 Ph. 345; and others referred to in Fisher, Mortg., 6th ed. 989.

Effect on parties to redemption suit.

The effect of this s. puts an end to the old rule that a puisne incumbrancer, though entitled to redeem those above him, cannot do so without foreclosing those below him: see *Ramsbottom* v. *Wallis,* 1835, 5 L. J. Ch. 92; *Rhodes* v. *Buckland,* 1852, 16 Beav. 212; *Teevan* v. *Smith,* 20 Ch. D. 729; Fisher, Mortg., 6th ed. 741, 742; and to deprive a first mortgagee of his right to retain his security unless the property is to be entirely cleared of its incumbrances from first to last.

How rights under this s. enforced.

The mode of enforcing the right given by this s. is—

(1) in an ordinary foreclosure or redemption action, in which the mortgagee is directed to transfer instead of reconveying, and on refusal there is the same remedy as on refusal to reconvey; see *Everitt* v. *Automatic Weighing Machine Co.,* 1892, 3 Ch. 506;

(2) in case of a sale, by payment of the amount of the incumbrance into court under s. 50, when, on refusal to transfer, a vesting order can be made under that s.;

(3) in an action brought for the specific purpose.

Transfers of mortgages.

By s. 114 a deed executed by a mortgagee, purporting to transfer his mortgage, or the benefit of it, will pass all the rights, powers, estate and liabilities of the original mortgagee to the transferee, his personal representatives and assigns, whenever the mortgage was made, provided that the transfer is made after 1925, thus cancelling the decision in *Re Beachey,* 1904, 1 Ch. 67.

This s. (s. 114) does not apply to a transfer of a bill of sale.

As to form of transfer, see 3rd Sch., *inf.*

Regulations respecting inspection, production and delivery of documents.

96.—(1) A mortgagor, as long as his right to redeem subsists, shall be entitled from time to time, at reasonable times, on his request, and at his own cost, and on payment of the mortgagee's costs and expenses in this behalf, to inspect and make copies or abstracts of or extracts from the documents of title relating to the mortgaged property in the custody or power of the mortgagee.

This subsection applies to mortgages made after the thirty-first day of December, eighteen hundred and eighty-one, and takes effect notwithstanding any stipulation to the contrary.

This sub-s. replaces the C. A., 1881, s. 16. The word "sub-section" is correct: see Corrigenda to the Act. The marginal note has the words "and priorities"; these have reference to the next s. They were struck out, but have been retained by the printers.

As to the meaning of "mortgagor," see s. 205 (1) (xvi); also note to s. 106 (4), *inf.*, relating to the production of documents.

Rights of mortgagor before 1882.

Before the C. A., 1881, a mortgagor could not see the title deeds after the mortgage had become absolute, without payment of principal, interest and costs: *Chichester* v. *Donegal,* 1870, 5 Ch. 497, 502; this applied even to the mortgage deed itself; see also 56 Sol. J. 156.

Where a first mortgagee who had been served with notice of an order for sale made in an action by the second mortgagee, under which order no steps had been taken, offered to produce the deeds and permit copies to be taken under this s., the court declined to order him to lodge them in court: *Armstrong* v. *Dickson*, 1911, 1 Ir. R. 435.

As to deeds since the Act, subsidiary to a mortgage before the Act, see *Burn* v. *London, &c. Coal Co.*, 1890, W. N. 209.

(2) A mortgagee, whose mortgage is surrendered or otherwise extinguished, shall not be liable on account of delivering documents of title in his possession to the person not having the best right thereto, unless he has notice of the right or claim of a person having a better right, whether by virtue of a right to require a surrender or reconveyance or otherwise.

Protection to mortgagee delivering up documents.

This sub-s. is new. It confirms the principles laid down in *Corbett* v. *Nat. Prov. Institution*, 1900, 17 T. L. R. 5.

"Or otherwise": see s. 95, *sup.*

Documents lost by mortgagee.

As to a mortgagor's remedies against a mortgagee for loss of or damage to documents: *Gilligan* v. *Nat. Bk.*, 1901, 2 Ir. R. 513.

Priorities as between puisne mortgages.

97. Every mortgage affecting a legal estate in land made after the commencement of this Act, whether legal or equitable (not being a mortgage protected by the deposit of documents relating to the legal estate affected) shall rank according to its date of registration as a land charge pursuant to the Land Charges Act, 1925.

This section does not apply to mortgages or charges of registered land or of land within the jurisdiction of a local deeds registry.

The word "section" is correct: see Corrigenda to the Act.

What legal mortgages must be registered.

Under L. C. A., 1925, s. 10, Class C., a legal mortgage where made after 1925, or where made before 1926 when transferred after 1925, must be registered as a land charge unless—

(i) the mortgage is protected by a deposit of the documents relating to the legal estate affected (s. 13, *sup.*); or

(ii) the whole of the land affected is within the jurisdiction of a local deeds registry and a memorial of the mortgage is registered in that register.

Penalty for non-registration.

For unless so registered before completion the mortgage is void as against a purchaser of the land charged therewith or of any interest in such land: *ib.*, s. 13 (2). But in the case of a transfer after 1925 of a "puisne" mortgage created before 1926, the transferee has one year within which to register the mortgage as a land charge before this penalty is imposed: *ib.*, s. 14 (2).

Mortgages deprived of benefit of being legal mortgages.

Under 1st Sch., Pt. VII., para. 6, and Pt. VIII., para. 5, freehold or leasehold mortgages made before 1926 which under those Parts are converted into legal mortgages are, nevertheless, as respects a purchaser in good faith without notice thereof, treated as equitable interests and can accordingly be defeated, unless registered as land charges, in the same way as they could have been defeated before 1926. To prevent this occurring L. C. A., 1925, s. 10 (7),

authorises a "puisne" mortgage created before 1926 to be registered before a transfer is made.

Modes of registration in local deeds register.

It is sufficient if a "puisne" mortgage affecting only land in Middlesex is registered by way of memorial in the Middlesex deeds register. Similarly, if the mortgage relates only to land within one of the three ridings (L. C. A., 1925, s. 20 (12)), it is sufficient if a memorial is registered in that riding.

In companies register.

If a mortgage created by a limited company is registered under the Cos. (Consol.) A., 1908, s. 93, that operates as the registration of a land charge under L. C. A., 1925, s. 10 (5).

Effect on priorities.

The above s. (s. 97) carries the matter a step further as respects not only "puisne" mortgages, but equitable mortgages (not being by deposit), for priority will be secured according to date of registration as a land charge. This is to some extent consequential on s. 198 (making registration operate as notice), as qualified or explained by s. 199, *inf.*, relating to constructive notice.

What mortgages secured by deposit will be registered.

Whether a first legal mortgage should, for safety, be registered as a land charge will depend on whether the mortgagee is satisfied that he obtains possession of all the material documents relating to the legal estate. If, for instance, immediately after a sale a purchaser hands over all the documents he obtains from his vendor to his mortgagee, no good purpose would be served by registering a land charge, for the purchaser cannot give a better title to his mortgagee than he has acquired himself. If, however, the mortgagee entertains any doubt whether he has obtained all the material documents, he should register a land charge. As to what documents were, before 1926, treated as sufficient to create a lien, see 1 Coote, 7th ed. 71, 72; *cf. Walker* v. *Linom*, 1907, 2 Ch. 104 (charge given priority to a suppressed settlement).

Ordinary mortgages by deposit only.

Ordinary mortgages by deposit only are not "puisne" mortgages; the equitable charge thereby created has not to be registered as a land charge: L. C. A., 1925, s. 10, Class C. (iii).

Saving of overreaching powers.

Though a land charge may have been registered, this does not prevent a prior mortgagee on sale, foreclosure or otherwise from defeating the mortgage protected by the registration: *ib.*, s. 22.

Registered land.

Charges on registered land are on a different footing; they rank according to date of registration subject to any entry to the contrary on the register: L. R. A., 1925, s. 29.

Actions for possession by mortgagors.

98.—(1) A mortgagor for the time being entitled to the possession or receipt of the rents and profits of any land, as to which the mortgagee has not given notice of his intention to take possession or to enter into the receipt of the rents and profits thereof, may sue for such possession, or for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person.

This s. replaces the Jud. A., 1873, s. 25 (5), and only relates to procedure.

Position of mortgagor in possession.

This s. does not affect the principles established by *Moss* v. *Gallimore*, 1779, 1 Doug. 279, and *Rogers* v. *Humphreys*, 1835, 4 Ad. & E. 299, first, that a mortgagor is in possession of the mortgaged property only by leave of the mortgagee, and, secondly, that the mortgagee must be treated as the reversioner, hence on taking possession is entitled to all arrears of rent in respect of leases

made before or after the mortgage, and in the latter case either under a power or with the concurrence of the mortgagee: *Re Ind, Coope*, 1911, 2 Ch. at 231, 232.

After 1925 the mortgagor will either have the fee simple or the term created by the lease which is mortgaged; the mortgagee will either have a long term in possession or a sub-term, or if the mortgage is made by charge by way of legal mortgage, a legal charge. As respects legal mortgages.

(2) This section does not prejudice the power of a mortgagor independently of this section to take proceedings in his own name only, either in right of any legal estate vested in him or otherwise.

After 1925 the mortgagor will not merely have an equity of redemption, but a legal estate in the land, hence this saving. Saving.

(3) This section applies whether the mortgage was made before or after the commencement of this Act.

This merely gives effect to the s. replaced. Retrospective.

99.—(1) A mortgagor of land while in possession shall, as against every incumbrancer, have power to make from time to time any such lease of the mortgaged land, or any part thereof, as is by this section authorised. Leasing powers of mortgagor and mortgagee in possession.

This s. replaces the C. A., 1881, s. 18, and the C. A., 1911, s. 3 (10) (11). Leasing powers of mortgagor and mortgagee in possession.

The effect of sub-s. (1) is to give the mortgagor "power to create a term out of the term (if any) of the mortgagee, and so to convert the mortgage term into one expectant on the term granted by the lease": *Municipal, &c. Society* v. *Smith*, 1888, 22 Q. B. D. 70; *Robbins* v. *Whyte*, 1906, 1 K. B. 125.

For the purposes of this sub-s. the expression "mortgagor" does not include an incumbrancer deriving title under the original mortgagor: sub-s. (18), *inf.* As to the meaning of "mortgagee," see s. 205 (1) (xvi), *inf.* Effect of sub-s. "Mortgagor." "Mortgagee."

After a receiver of the income of the mortgaged property or any part thereof has been appointed under this Act, and so long as such receiver acts, the powers conferred by this s. are exercisable as respects any land affected by the receivership by the mortgagee instead of the mortgagor: sub-s. (19), *inf.* Effect of appointment of receiver.

For the meaning of "land," see s. 205 (1) (ix), *inf.* Under the corresponding s. of the C. A. a lease by the mortgagor of part of the mortgaged property with sporting rights over the rest, which had been severed before the mortgage, was held good as against the mortgagee: *Brown* v. *Peto*, 1900, 2 Q. B. 653, in which case the question whether the power conferred by the s. extended to an incorporeal hereditament, although unsevered until the making of the lease, was left open: *S. C.*, p. 665. See now "land": s. 205 (1) (ix). Sporting rights.

Where this s. is not excluded, a lessee under a lease by the mortgagor in possession, with the concurrence of the first mortgagee, holds under the better title (viz., that of the mortgagor) and is bound by a covenant, of which he has notice, entered into by the mortgagor with a second mortgagee: *John Brothers* v. *Holmes*, 1900, 1 Ch. 188, in which case, however, the point does not seem to have been taken that the lease could not have been granted under this s. by the mortgagor in possession alone, as a fine was taken (see sub-s. (6)). Lease by mortgagor in possession and mortgagee.

A lease by a mortgagor in possession, which in other respects complies with the s., is not invalidated by containing an option of renewal, or a power of Option to renew or determine.

determination by the lessee: *King* v. *Bird*, 1909, 1 K. B. 837. See now as to renewals, L. P. A., 1922, 15th Sch., para. 7 (2), and s. 149 (3), *inf.*

Light. The lease may operate to confer rights of light, &c. over adjoining land, at least so far as the law gives a right of light to a lessee: *Wilson* v. *Queen's Club*, 1891, 3 Ch. 522; and compare *Born* v. *Turner*, 1900, 2 Ch. 211.

Surrenders. This s. does not authorise a mortgagor in possession to accept a surrender of a lease without the concurrence of the mortgagee, whether the lease was granted before the mortgage, or after it under this s.: *Robbins* v. *Whyte, sup.*; but s. 100 empowers both mortgagors and mortgagees when in possession to accept surrenders of leases in certain cases; and contrast the wider powers conferred on tenants for life by S. L. A., 1925, ss. 41 to 48.

(2) A mortgagee of land while in possession shall, as against all prior incumbrancers, if any, and as against the mortgagor, have power to make from time to time any such lease as aforesaid.

"Mortgagee." As to the meaning of "mortgagee," see s. 205 (1) (xvi), *inf.*

"Land." As to the meaning of "land," see s. 205 (1) (ix), *inf.*

Prior incumbrancers. The prior incumbrancers mentioned in this sub-s. are those becoming such after 31st December, 1881, but by agreement incumbrancers who became such previously may be included (see sub-s. (16)).

Foreclosure. If a mortgagee after foreclosure grants a lease which would have been valid under this s. if granted by him as mortgagee in possession, he has done nothing to prevent the mortgagor getting back his property intact, hence is not debarred from suing on the covenant for payment, and thereby reopening the foreclosure: *Higgs* v. *Baker*, 1905, 50 Sol. J. 141.

(3) The leases which this section authorises are—

(i) agricultural or occupation leases for any term not exceeding twenty-one years, or, in the case of a mortgage made after the commencement of this Act, fifty years; and

(ii) building leases for any term not exceeding ninety-nine years, or, in the case of a mortgage made after the commencement of this Act, nine hundred and ninety-nine years.

Extension of powers. The powers to create 50 and 999 years terms are new.

Occupation lease. As to an "occupation lease" of an incorporeal right over land, see *Brown* v. *Peto*, 1900, 2 Q. B. 653.

See definition of "building lease," s. 205 (1) (iii).

As to mining lease. A mining lease is not authorised by this s., as it involves an abstraction of part of the security, but it can be brought within this s. by agreement made with the mortgagee and all other mortgagees who might be affected: see sub-s. (14).

Small holdings. S. 39 (6) of the Small Holdings and Allotments A., 1908, provides that where land authorised to be compulsorily hired by an order under that s. is subject to a mortgage, any lease made pursuant to the order by the mortgagor or mortgagee in possession shall have the like effect as if it were a lease authorised by this s. See as to references to the repealed enactments, s. 207 (e), *inf.*

(4) Every person making a lease under this section may execute and do all assurances and things necessary or proper in that behalf.

Machinery.

For instance, enter into covenants. As to executing leases in the name of the "estate owner," see s. 8 (1), *sup.*

(5) Every such lease shall be made to take effect in possession not later than twelve months after its date.

Lease in possession.

As to what is a lease in possession, see s. 205 (1) (xix), *inf.*

(6) Every such lease shall reserve the best rent that can reasonably be obtained, regard being had to the circumstances of the case, but without any fine being taken.

Option to renew.

Lease including other property.

A lease is not invalidated by reason of its containing an option to renew at a fixed rent, but the renewal would be bad if the rent were not at the time thereof the best rent: *King* v. *Bird,* 1909, 1 K. B. 837; and a lease which includes property other than that comprised in the mortgage at one entire rent does not comply with this s. A subsequent deed between the mortgagor and his lessee apportioning the rent does not validate the lease as against the mortgagee: *S. C.*

"Rent."

Rent is defined in s. 205 (1) (xxiii), *inf.*

(7) Every such lease shall contain a covenant by the lessee for payment of the rent, and a condition of re-entry on the rent not being paid within a time therein specified not exceeding thirty days.

Condition of re-entry.

As to the condition of re-entry in the case of incorporeal hereditaments, see *Brown* v. *Peto,* 1900, 2 Q. B. 653, and compare *Sitwell* v. *Earl of Londesborough,* 1905, 1 Ch. 460.

(8) A counterpart of every such lease shall be executed by the lessee and delivered to the lessor, of which execution and delivery the execution of the lease by the lessor shall, in favour of the lessee and all persons deriving title under him, be sufficient evidence.

(9) Every such building lease shall be made in consideration of the lessee, or some person by whose direction the lease is granted, having erected, or agreeing to erect within not more than five years from the date of the lease, buildings, new or additional, or having improved or repaired buildings, or agreeing to improve or repair buildings within that time, or having executed, or agreeing to execute, within that time, on the land

leased, an improvement for or in connexion with building purposes.

Building leases.

Compare S. L. A., 1925, ss. 44, 46, 117 (1) (i).

(10) In any such building lease a peppercorn rent, or a nominal or other rent less than the rent ultimately payable, may be made payable for the first five years, or any less part of the term.

(11) In case of a lease by the mortgagor, he shall, within one month after making the lease, deliver to the mortgagee, or, where there are more than one, to the mortgagee first in priority, a counterpart of the lease duly executed by the lessee, but the lessee shall not be concerned to see that this provision is complied with.

Mortgagee's right to counterparts.

The penalty for omitting to deliver the counterpart is that the power of sale becomes exercisable (s. 103 (iii)). The validity of the lease is not affected. And see *Public Trustee* v. *Lawrence*, 1912, 1 Ch. 789.

(12) A contract to make or accept a lease under this section may be enforced by or against every person on whom the lease if granted would be binding.

Contracts.

"Would be binding": see sub-ss. (1) and (2), *sup.*

(13) This section applies only if and as far as a contrary intention is not expressed by the mortgagor and mortgagee in the mortgage deed, or otherwise in writing, and has effect subject to the terms of the mortgage deed or of any such writing and to the provisions therein contained.

Contrary intention.

A contrary intention (if any) will be expressed by the mortgagor and mortgagee in the mortgage deed, whether the mortgagee executes or not. The mere acceptance by him of the security binds him, as in the ordinary case of an agreement not to call in the principal money for a fixed term, or for reduction of interest.

(14) The mortgagor and mortgagee may, by agreement in writing, whether or not contained in the mortgage deed, reserve to or confer on the mortgagor or the mortgagee, or both, any further or other powers of leasing or having reference to leasing; and any further or other powers so reserved or conferred shall be exercisable, as far as may be, as if they were conferred by this Act, and with all the like incidents, effects, and consequences:

Provided that the powers so reserved or conferred shall not prejudicially affect the rights of any mortgagee interested under any other mortgage subsisting at the date of the agreement, unless that mortgagee joins in or adopts the agreement.

For the purposes of this sub-s. "mortgagor" does not include an incumbrancer deriving title through the original mortgagor: sub-s. (18), *inf.* As to meaning of "incumbrancer," see s. 205 (vii), *inf.*

Further powers.

This sub-s. enables special provisions to be made as to leasing, and leases made in accordance with such provisions will be in the same position as leases authorised by this s.; such provisions can now be made subsequently to the mortgage deed. Where the statutory power was extended to leases for any term not exceeding 999 years, and the mortgage deed contained an express provision for delivery of counterparts to the mortgagee, without any words exempting the lessee from seeing that the provision was complied with, held, nevertheless that by virtue of this sub-s. the statutory provision at the end of sub-s. (11) applied: *Public Trustee* v. *Lawrence*, 1912, 1 Ch. 789.

Supplemental agreements.

This sub-s. is wider than the corresponding sub-s. in the C. A., 1881, for it authorises supplemental agreements. This is of importance, for under the old law the mortgagor's powers could only have been extended by the mortgage deed or by a deed operating under the Statute of Uses. The proviso is new.

(15) Nothing in this Act shall be construed to enable a mortgagor or mortgagee to make a lease for any longer term or on any other conditions than such as could have been granted or imposed by the mortgagor, with the concurrence of all the incumbrancers, if this Act and the enactments replaced by this section had not been passed:

Provided that in the case of a mortgage of leasehold land, a lease granted under this section shall reserve a reversion of not less than one day.

Binding effect of leases.

This sub-s. shows that under sub-s. (2), *sup.*, the lease by a mortgagee will bind incumbrancers as well as the mortgagor, notwithstanding the definition in sub-s. (18), *inf.*

Nominal reversion.

The proviso is new.

(16) Subject as aforesaid this section applies to any mortgage made after the thirty-first day of December, eighteen hundred and eighty-one, but the provisions thereof, or any of them, may, by agreement in writing made after that date, between mortgagor and mortgagee, be applied to a mortgage made before that date, so nevertheless that any such agreement shall not prejudicially affect any right or interest of any mortgagee not joining in or adopting the agreement.

Extension o s. to mortgages made before 1882.

This sub-s. enables the provisions of this s. to be applied to mortgages made before 1882.

Under an agreement made before 1882 to execute a mortgage containing a power of sale and all usual clauses, the mortgagee was not entitled to have the

operation of the s. excluded: *Re Nugent & Riley,* 1883, 49 L. T. 132; and compare *Farmer* v. *Pitt,* 1902, 1 Ch. 954.

(17) The provisions of this section referring to a lease shall be construed to extend and apply, as far as circumstances admit, to any letting, and to an agreement, whether in writing or not, for leasing or letting.

Tenancies in writing.

This sub-s., extending the provisions of this s. to agreements, whether in writing or not, for leasing or letting, must be read in connexion with ss. 52 and 54, by the combined operation of which enactments a lease for three years or less may be in writing or parol, but a lease for more than three years must be by deed.

Parol agreement.

The effect of the words "as far as circumstances admit," is that sub-ss. (7) and (8) as to covenants, conditions of re-entry, and counterparts do not apply to a parol agreement, and sub-s. (7) as to covenants does not apply to an agreement in writing, except that there ought to be the nearest approach to a covenant, namely, an agreement to pay rent.

Effect of leases under this s.

Power is given to the person in possession, whether owner or incumbrancer, to grant, or contract to grant (sub-s. (12)), leases of the kind specified in sub-s. (3), conformable to the other provisions of this s. These leases will be binding on all other persons interested, and will confer a valid legal term, leaving a legal reversion in the mortgagee, assuming the mortgage passed a mortgage term; a chargee by way of legal mortgage is in the same position as if he had a mortgage term. The rent and the benefit of the lessee's covenants and the condition of re-entry will become annexed to the legal reversion, and will be capable of being recovered, enforced and taken advantage of by the mortgagor while in possession, and then by the mortgagee (see s. 141 and note thereto). The lessee will also, to the extent of covenants or provisions in his favour authorised by law (see *Wilson* v. *Queen's Club,* 1891, 3 Ch. 522), or (see sub-s. (14)) by the mortgage deed or by agreement, have the same rights against the reversioner and persons claiming under him as if he had made or joined in making the lease (see s. 142).

Effect of excluding operation of s.

If the mortgagor's power to lease given by this s. is excluded, then under a lease made by the mortgagor after the mortgage the mortgagee has no reversion, the covenants by the lessee are covenants relating to the fee simple or head term vested in the mortgagor, and cannot be sued upon by the mortgagee or a purchaser from him until he acquires the fee simple or head term: see as to the old law, *Cuthbertson* v. *Irving,* 1860, 6 H. & N. 135; *Webb* v. *Austin,* 1844, 7 Man. & G. 701; *Doe* d. *Downe* v. *Thompson,* 1847, 9 Q. B. 1037. The only remedy of the mortgagee when he takes possession and before he acquires the fee simple or head term is to eject the lessee. This in most cases is not desired, and is an inadequate remedy, especially in the case of house property, where an essential part of the value of the reversion consists in an available remedy against the tenant on the covenant to paint, repair, deliver up in repair, &c. In the case of agricultural land also, the covenants may be of importance if only to give a right to an injunction. Also if the operation of the Act be excluded, acceptance of rent by the mortgagee will constitute the lessee simply tenant from year to year at common law, without reference to the terms of the lease, unless a special agreement to that effect be proved (*Corbett* v. *Plowden,* 1884, 25 Ch. D. 678; *Keith* v. *R. Gancia,* 1904, 1 Ch. 774, 783), and in the case of agricultural land, will bring into operation the Agricultural Holdings Act, 1923, which renders necessary a notice expiring after twelve months from the end of the then current year of the tenancy. On the other hand, if the lease be made under this s. the mortgagee on taking possession has

his remedy for rent on the covenants: *Municipal, &c. Bldg. Soc.* v. *Smith*, 1888, 22 Q. B. D. 70, and is not affected by any collateral agreement between the mortgagor and the lessee.

Restrictions on s.

If any restriction is to be placed on the power of the mortgagor to lease under this s., it should at most extend to prevent him from granting leases either without certain desired restrictions, or without the consent in writing of the mortgagee. The mortgagor must generally, to make his property available, grant leases of some kind, and it is not advisable to compel him to grant leases which are liable to be defeated.

Trustee mortgagees.

Trustee mortgagees are not guilty of negligence merely because they abstain from precluding the mortgagor from exercising the powers conferred by this s.: *Shaw* v. *Cates*, 1909, 1 Ch. 389, at p. 408.

Agricultural Holdings Act.

A sum due for compensation under the Agricultural Holdings Act, 1923, in respect of a lease granted by a mortgagor under this s. would not, it is conceived, be recoverable personally against the mortgagee, but would be only a charge on the holding as against him (s. 20 of that Act), he being a landlord entitled to receive rents and profits in a "character otherwise than for his own benefit." As to the rights of a tenant of agricultural land, allotments or cottage gardens against a mortgagee not bound by the tenancy, see the Agr. Hold. A., 1923, s. 15.

As to the meaning of agricultural holding, see Agr. Hold. A., 1923, ss. 33 (1), 57 (1).

(18) For the purposes of this section "mortgagor" does not include an incumbrancer deriving title under the original mortgagor.

This sub-s. replaces C. A., 1911, s. 3 (10), but only relates in fact to sub-ss. (1) and (14) of this s. "Incumbrancer": s. 205 (1) (vii).

"Mortgagor."

The general definition of "mortgagor" (*ib.* (xvi)) includes any person from time to time deriving title under the original mortgagor or entitled to redeem a mortgage according to his estate interest or right in the mortgaged property.

(19) The powers of leasing conferred by this section shall, after a receiver of the income of the mortgaged property or any part thereof has been appointed by a mortgagee under his statutory power, and so long as the receiver acts, be exercisable by such mortgagee instead of by the mortgagor, as respects any land affected by the receivership, in like manner as if such mortgagee were in possession of the land, and the mortgagee may, by writing, delegate any of such powers to the receiver.

This sub-s. replaces C. A., 1911, s. 3 (11).

Effect of appointment of receiver as respects leasing powers.

The powers conferred by this sub-s. are important, for they enable a mortgagee to grant a lease without incurring the liabilities of a mortgagee in possession.

"Income of the mortgaged property."

"Possession" includes the right to receive rents and profits, if any, and "income" includes rents and profits (s. 205 (1) (xix)); hence the appointment of a receiver as respects unlet land would, it seems, authorise a mortgagee to exercise the powers under this s.

Delegation.

If the powers are delegated they must be exercised in the name of the estate owner (*e.g.*, the mortgagor): s. 8, *sup.*

Powers of mortgagor and mortgagee in possession to accept surrenders of leases.

100.—(1) For the purpose only of enabling a lease authorised under the last preceding section, or under any agreement made pursuant to that section, or by the mortgage deed (in this section referred to as an authorised lease) to be granted, a mortgagor of land while in possession shall, as against every incumbrancer, have, by virtue of this Act, power to accept from time to time a surrender of any lease of the mortgaged land or any part thereof comprised in the lease, with or without an exception of or in respect of all or any of the mines and minerals therein, and, on a surrender of the lease so far as it comprises part only of the land or mines and minerals leased, the rent may be apportioned.

This s. reproduces the C. A., 1911, s. 3, as respects powers to accept surrenders.

"Lease" applies to any letting: sub-s. (9), *inf.*

Extension to mortgages made before 1912.

"Agreement made pursuant to that section": see sub-ss. (14) (16), *sup.*

The words "by the mortgage deed" extend to the case of a mortgage whenever made, but the provisions of this s. do not apply to a mortgage made before 1912 unless made applicable thereto by agreement in writing: sub-s. (8).

"Mortgagor" does not apply in this s. to an incumbrancer deriving title through the original mortgagor: sub-s. (12). As to "land," see s. 205 (1) (ix), it includes mines and minerals.

"Mortgagor in possession."

For the purposes of this sub-s. a mortgagor is not treated as being in possession when a receiver has the powers under sub-s. (13).

(2) For the same purpose, a mortgagee of land while in possession shall, as against all prior or other incumbrancers, if any, and as against the mortgagor, have, by virtue of this Act, power to accept from time to time any such surrender as aforesaid.

Power for mortgagee in possession to accept surrenders.

As a rule the mortgagee will prefer to act after a receiver is appointed without taking possession: sub-s. (13).

For "mortgagee": s. 205 (1) (xvi).

(3) On a surrender of part only of the land or mines and minerals leased, the original lease may be varied, provided that the lease when varied would have been valid as an authorised lease if granted by the person accepting the surrender; and, on a surrender and the making of a new or other lease, whether for the same or for any extended or other term, and whether subject or not to the same or to any other covenants, provisions, or conditions, the value of the lessee's interest in the lease surrendered may, subject to the provisions of this section, be taken into account in the determination of the amount of the rent to be reserved, and of the nature

of the covenants, provisions, and conditions to be inserted in the new or other lease.

"Subject to the provisions of this section": see sub-s. (5).

Variation of lease as to new lease.

(4) Where any consideration for the surrender, other than an agreement to accept an authorised lease, is given by or on behalf of the lessee to or on behalf of the person accepting the surrender, nothing in this section authorises a surrender to a mortgagor without the consent of the incumbrancers, or authorises a surrender to a second or subsequent incumbrancer without the consent of every prior incumbrancer.

No consideration for the surrender (except an agreement to accept an authorised lease) must be given to the person accepting the surrender without the consent of the other persons interested.

Payment of consideration.

(5) No surrender shall, by virtue of this section, be rendered valid unless:—

(a) An authorised lease is granted of the whole of the land or mines and minerals comprised in the surrender to take effect in possession immediately or within one month after the date of the surrender; and

(b) The term certain or other interest granted by the new lease is not less in duration than the unexpired term or interest which would have been subsisting under the original lease if that lease had not been surrendered; and

(c) Where the whole of the land mines and minerals originally leased has been surrendered, the rent reserved by the new lease is not less than the rent which would have been payable under the original lease if it had not been surrendered; or where part only of the land or mines and minerals has been surrendered, the aggregate rents respectively remaining payable or reserved under the original lease and new lease are not less than the rent which would have been payable under the original lease if no partial surrender had been accepted.

This sub-s. is frequently negatived in practice, as the restrictions are onerous.

Restrictions on power.

(6) A contract to make or accept a surrender under this section may be enforced by or against every

person on whom the surrender, if completed, would be binding.

Contracts to accept surrenders.

Hence a contract by a mortgagor in possession to accept a surrender can be enforced against a mortgagee who, before completion of the contract, takes posesssion, or appoints a receiver under s. 101 (1) (iii).

(7) This section applies only if and as far as a contrary intention is not expressed by the mortgagor and mortgagee in the mortgage deed, or otherwise in writing, and shall have effect subject to the terms of the mortgage deed or of any such writing and to the provisions therein contained.

Contrary intention.

"Mortgage": s. 205 (1); "or otherwise in writing," *e.g.*, in a transfer of a mortgage, or by endorsement.

(8) This section applies to a mortgage made after the thirty-first day of December, nineteen hundred and eleven, but the provisions of this section, or any of them, may, by agreement in writing made after that date, between mortgagor and mortgagee, be applied to a mortgage made before that date, so nevertheless that any such agreement shall not prejudicially affect any right or interest of any mortgagee not joining in or adopting the agreement.

Extent of s.

See note to s. 99 (16), *sup.*

(9) The provisions of this section referring to a lease shall be construed to extend and apply, as far as circumstances admit, to any letting, and to an agreement, whether in writing or not, for leasing or letting.

Tenancies.

See note to s. 99 (17), *sup.*

(10) The mortgagor and mortgagee may, by agreement in writing, whether or not contained in the mortgage deed, reserve or confer on the mortgagor or mortgagee, or both, any further or other powers relating to the surrender of leases; and any further or other powers so conferred or reserved shall be exercisable, as far as may be, as if they were conferred by this Act, and with all the like incidents, effects and consequences:

Provided that the powers so reserved or conferred shall not prejudicially affect the rights of any mortgagee interested under any other mortgage subsisting at the date of the agreement, unless that mortgagee joins in or adopts the agreement.

Extension of powers.

See note to s. 99 (14), *sup.*

(11) Nothing in this section operates to enable a mortgagor or mortgagee to accept a surrender which could not have been accepted by the mortgagor with the concurrence of all the incumbrancers if this Act and the enactments replaced by this section had not been passed.

Operation of surrenders.

See note to s. 99 (15).

(12) For the purposes of this section "mortgagor" does not include an incumbrancer deriving title under the original mortgagor.

"Mortgagor."

The definition in this sub-s. is only required in connexion with sub-ss. (i) and (ii), *sup.* See note to s. 99 (18), *sup.*

(13) The powers of accepting surrenders conferred by this section shall, after a receiver of the income of the mortgaged property or any part thereof has been appointed by the mortgagee, under the statutory power, and so long as the receiver acts, be exercisable by such mortgagee instead of by the mortgagor, as respects any land affected by the receivership, in like manner as if such mortgagee were in possession of the land; and the mortgagee may, by writing, delegate any of such powers to the receiver.

Effect of appointment of receiver.

This sub-s. is important, for it enables the mortgagee to exercise the statutory powers in this case without rendering himself liable to account as mortgagee in possession, and to appoint the receiver his attorney.

See also notes to s. 99 (19), *sup.*

Summary of Powers conferred on Mortgagors and Mortgagees.

The following is a summary of the powers conferred on mortgagors and mortgagees by this Act and made incident to their estates, unless a contrary intention is expressed, except as to the first two powers, (i) and (ii), which apply notwithstanding any stipulation to the contrary:—

A mortgagor—

Powers of mortgagor conferred by this Act.

(i) May require the mortgagee, not being or not having been in possession, to transfer instead of reconveying, and to assign the debts: s. 95.

(ii) May inspect and take copies of title deeds: s. 96 (1).

(iii) May redeem one mortgage without redeeming any other: s. 93.

(iv) May have an order for sale in an action for redemption or sale: s. 91.

Mortgagor in possession.

(v) May, when in possession so long as no receiver has been appointed by the mortgagee, make or agree to make agricultural or occupation leases not exceeding twenty-one years, or, in the case of mortgages made after 1925, fifty years; building leases not exceeding ninety-nine years or, in the case of mortgages made after 1925, nine hundred and ninety-nine years: s. 99; and accept surrenders of leases in certain cases: s. 100.

(i) and (iv) are retrospective; (ii), (iii) and (v) apply where the mortgages were made after 1881.

Powers of mortgagee.

A mortgagee under a *deed* made after 1881—

(vi) May, when the mortgage money has become due, sell or concur in selling: ss. 101 (1), 103, 104, 105, 106; in cases where the deed is after 1911, with the extended powers mentioned in s. 101 (2).

(vii) May insure: ss. 101 (ii), 108.

(viii) May appoint and remove a receiver: ss. 101 (iii), 109.

(ix) May give receipts for purchase and other money and securities: s. 107.

(x) May, after his power of sale has become exerciseable, recover the title deeds, except against persons having prior claims: s. 106 (4).

Mortgagee in possession.

(xi) May, when in possession or after appointing a receiver, exercise the like powers of leasing or agreeing to lease and, if deed is made after 1911, accepting surrenders as a mortgagor in possession: see (v), *sup.*; ss. 99, 100 (2), (8). These powers may be made applicable by agreement to mortgages made before 1882 and 1912 respectively: ss. 99 (16) and 100 (10).

(xii) May when in possession cut and sell timber: s. 101 (1) (iv).

A mortgagee, whether the mortgage is made before or after 1881—

(xiii) May obtain an order for sale in an action for foreclosure or redemption: s. 91.

A second or subsequent mortgagee, as being a person entitled to redeem (see s. 205 (xvi))—

(xiv) May also exercise powers (i) to (iv).

Equitable mortgagees.

(xv) Equitable mortgagees can obtain orders enabling them to sell: s. 90.

Devolution of mortgage estates on death.

(xvi) On the death of a sole mortgagee his estate devolves in the manner prescribed by the Ad. of E. A., 1925, ss. 1, 3.

Sale; Insurance; Receiver; Timber.

A conveyance by a mortgagee selling under the statutory power need not refer to the power, as by s. 104 (3) such a sale will be deemed to be in exercise of this power, unless a contrary intention appears.

Mortgage should be by deed.

S. 101 only applies to mortgages by *deed:* sub-s. (1); but it applies whether the mortgage is made by demise or by legal charge: see ss. 85, 86, 87, *sup.* It does not affect the power of sale which is implied in the case of a mortgage of shares in a company not made by deed, or a pledge: *Deverges* v. *Sandeman,* 1902, 1 Ch. 579.

The estate conveyed by a mortgagee upon exercise of his power of sale.

In the case of an equitable mortgage it does not empower the mortgagee to convey the legal estate: *Re Hodson & Howe,* 1887, 35 Ch. D. 668. But by ss. 88 and 89 a legal mortgagee may convey both the mortgage term, if any, and the reversion expectant thereon. He can also convey the fixtures.

Several mortgagees for separate sums.

Where several mortgagees claim under one mortgage, though in distinct sums, they must all join in the exercise of the powers conferred on a mortgagee by this Act: see s. 205 (xvi), where "mortgage money" means "money (*i.e.*, the whole money) secured by a mortgage," and "mortgagee" (which includes the plural) must necessarily have a corresponding meaning; and see *Blaker* v. *Herts, &c. Co.*, 1889, 41 Ch. D. 399. A mortgage term cannot be held in undivided shares. The money will be generally treated as advanced out of a joint account: s. 111. In special cases express provision should be made as to who is to exercise the powers (see, for this purpose, sub-ss. (3), (4) of s. 101).

Transfer of part.

Where part of a mortgage debt is assigned, the part assigned being postponed to the part retained, and the assignee being given no power to give receipts, the assignor's statutory power of sale remains unaffected: *Flower & Sons, Ltd.* v. *Pritchard,* 1909, 53 Sol. J. 178.

The above provisions apply to mortgages of registered land: see L. R. A., 1925, s. 27; L. P. A., 1925, ss. 85, 86.

Restrictions on the powers of mortgagees.

The Inc. of Rent and Mtge. Int. (Rest.) A., 1920, does not apply to mortgages created after 1st July, 1920, or to equitable charges by deposit, or certain other mortgages. Where that Act applies (see Sophian's Rent Restriction Acts, 1920 to 1923, p. 127) a mortgagee (except as mentioned in s. 7 of that Act) may not realise his security by foreclosure, sale or otherwise.

Powers incident to estate or interest of mortgagee.

101.—(1) A mortgagee, where the mortgage is made by deed, shall, by virtue of this Act, have the following powers, to the like extent as if they had been in terms conferred by the mortgage deed, but not further (namely):—

(i) A power, when the mortgage money has become due, to sell, or to concur with any other person in selling, the mortgaged property, or any part thereof, either subject to prior charges, or not, and either together or in lots, by public auction or by private contract, subject to such conditions respecting title, or evidence of title, or other matter, as the mortgagee thinks fit, with power to vary any contract for sale, and to buy in at an auction, or to rescind any contract for sale, and to re-sell, without being answerable for any loss occasioned thereby; and

Sale at a rent.

This sub-s. replaces C. A., 1881, s. 19 (1). It may still be convenient in parts of England to give a mortgagee an express power to sell in consideration of the reservation of a perpetual rentcharge, and then to sell the rentcharge.

"Mortgagee" and "mortgage": s. 205 (1) (xvi).

Operation of conveyance.

The effect of the conveyance under the power in regard to mortgages of land is extended by ss. 88 and 89, *sup.*; see also s. 104, *inf.*

Regulations.

As to when the power is exercisable: s. 103; as to the power to give receipts: s. 107.

As to sales by the court: ss. 90, 91.

Exercise of power after decree for foreclosure or redemption.

An order nisi for foreclosure, or a judgment in a redemption action, does not extinguish the power of sale, but the mortgagee cannot exercise it without the leave of the court: *Stevens* v. *Theatres, Ltd.*, 1903, 1 Ch. 857; though a purchaser for value without notice would get a good title: *S. C.*, 864. The mere commencement of an action for redemption will not prevent an exercise of the power: *Adams* v. *Scott*, 1859, 7 W. R. 213. An exercise of the power after foreclosure absolute opens the foreclosure: *Watson* v. *Marston*, 1853, 4 D. M. & G. 230.

Mortgaged estate sold with other property.

As to the duty of mortgagees where the mortgaged estate is sold with other property, see the analogous case of the sale of trust property, note to T. A., 1925, s. 12.

Bills of Sale Act, 1882.

The statutory form in the Bills of Sale Act, 1882, does not incorporate the power of sale given by this Act: *Calvert* v. *Thomas*, 1887, 19 Q. B. D. 204; nor does the power of sale apply in the case of several debentures given by a joint stock company: see *Blaker* v. *Herts, &c. Co.*, 1889, 41 Ch. D. 399; but see Palmer, Comp. Prec., 11th ed., Pt. III., p. 464; and as to a mortgage to a building society in the ordinary form, see *Re Thompson & Holt*, 1890, 44 Ch. D. 492; *Re Rumney & Smith*, 1897, 2 Ch. 351.

Debentures and building society mortgages.

"Or any part thereof."

Trade machinery; timber.

Easements.

The words in cl. (i) "or any part thereof" do not authorise a sale of trade machinery separately from the land: *Re Yates*, 1888, 38 Ch. D. 112; nor the land without the timber, or *vice versâ*: *Cholmeley* v. *Paxton*, 3 Bing. 207, 213; *Cockerell* v. *Cholmeley*, 10 B. & C. 564. As to power to sell timber when in possession, see (iv), *inf.* Nor where sub-s. (2) does not apply could a new easement be expressly granted: *Dayrell* v. *Hoare*, 1840, 12 A. & E. 356; but, on a sale of part, the mortgagee could always convey the part sold with all the legal incidents accompanying the grant, *e.g.*, an implied right to light over the part unsold: *Born* v. *Turner*, 1900, 2 Ch. 211.

(ii) A power, at any time after the date of the mortgage deed, to insure and keep insured against loss or damage by fire any building, or any effects or property of an insurable nature, whether affixed to the freehold or not, being or forming part of the property which or an estate or interest wherein is mortgaged, and the premiums paid for any such insurance shall be a charge on the mortgaged property or estate or interest, in addition to the mortgage money, and with the same priority, and with interest at the same rate, as the mortgage money; and

The words "the property which or an estate or interest wherein is mortgaged" are substituted for "mortgaged property." Also the words "or estate or interest" have been added. In other respects this reproduces C. A., 1881, s. 19 (1) (ii).

When mortgagee may insure.

Under this sub-s. the mortgagee will be justified in insuring, unless the mortgagor shows by delivering receipt for premium, or otherwise, that a proper insurance is maintained.

As to the amount and application of the insurance money and the cases in which the mortgagee is not by this Act authorised to insure, see s. 108.

Old law.

As to the law before the C. A., 1881, see *Dobson* v. *Land*, 1850, 8 Ha. 216, and Lord Cranworth's Act, s. 11 (2).

(iii) A power, when the mortgage money has become due, to appoint a receiver of the income of the mortgaged property, or any part thereof; or, if the mortgaged property consists of an interest in income, or of a rentcharge or an annual or other periodical sum, a receiver of that property or any part thereof; and

The last four lines are new; in other respects this is a reproduction of C. A., 1881, s. 19 (1) (iii).

Receivers.

The receiver is the mortgagor's agent: s. 109 (2); but so long as he acts, the powers of leasing and of accepting surrenders of leases are exercisable by the mortgagee: ss. 99, 100.

As to the appointment, powers, &c. of a receiver, see s. 109. The appointment must be in writing: s. 109 (1).

A receiver cannot, under this sub-s., be appointed of book debts comprised in a mortgage of a business: *Rutter* v. *Everett*, 1895, 2 Ch. 872, 875, 877; but see sub-s. (3) authorising variations. Book debts.

"Income" includes not only rents and profits, but the right to receive any: s. 205 (1) (xix). "Income."

As to whether a debenture holder's receiver is agent for the debenture holders or for the company, see *Deyes* v. *Wood*, 1911, 1 K. B. 806. Debentures.

(iv) A power, while the mortgagee is in possession, to cut and sell timber and other trees ripe for cutting, and not planted or left standing for shelter or ornament, or to contract for any such cutting and sale, to be completed within any time not exceeding twelve months from the making of the contract.

The appointment of a receiver does not give the mortgagee a right to cut and sell timber.

On this sub-s. see *Re Yates*, 1888, 38 Ch. D. 112, at pp. 117, 129.

It is conceived that proceeds of the sale of timber will be rents and profits, and need not be treated as at once applied (like proceeds of sale of the inheritance: see *Thompson* v. *Hudson*, 1870, 10 Eq. 497) in discharge of interest and costs, and then of principal, on taking the account against the mortgagee. As to the mode of taking such account, see *Ainsworth* v. *Wilding*, 1905, 1 Ch. 435; *Wrigley* v. *Gill*, 1906, 1 Ch. 165. Proceeds of timber. Mortgagee's account.

(2) Where the mortgage deed is executed after the thirty-first day of December, nineteen hundred and eleven, the power of sale aforesaid includes the following powers as incident thereto (namely):—

(i) A power to impose or reserve or make binding, as far as the law permits, by covenant, condition, or otherwise, on the unsold part of the mortgaged property or any part thereof, or on the purchaser and any property sold, any restriction or reservation with respect to building on or other user of land, or with respect to mines and minerals, or for the purpose of the more beneficial working thereof, or with respect to any other thing:

(ii) A power to sell the mortgaged property, or any part thereof, or all or any mines and minerals apart from the surface:—

(a) With or without a grant or reservation of rights of way, rights of water, easements, rights, and privileges for or connected with building or other purposes in relation to the

property remaining in mortgage or any part thereof, or to any property sold: and

(b) With or without an exception or reservation of all or any of the mines and minerals in or under the mortgaged property, and with or without a grant or reservation of powers of working, wayleaves, or rights of way, rights of water and drainage and other powers, easements, rights, and privileges for or connected with mining purposes in relation to the property remaining unsold or any part thereof, or to any property sold: and

(c) With or without covenants by the purchaser to expend money on the land sold.

This sub-s. replaces the C. A., 1911, s. 4.

Restrictive covenants, easements.

Restrictive covenants should be registered as a land charge or they may be overreached: see L. C. A., 1925, s. 10, Class D. (ii).

Minerals.

Where this sub-s. does not apply, an order can be obtained under s. 92, *sup.*

Incidental powers.

These incidental powers in the main correspond with the powers given by the S. L. A., 1925, to a tenant for life, and are in addition to those recognised in *Born* v. *Turner,* 1900, 2 Ch. 211. Thus a mortgagee with the aid of restrictive covenants, or reservations, may develop the mortgaged land as a building or mining estate; he may sell the minerals apart from the surface and *vice versâ* without obtaining an order of the court under s. 92.

Extension of powers.

The powers may be extended or varied by the mortgage deed and have effect subject to the terms thereof: sub-s. (3), *inf.;* but only apply to mortgages made after 1911; though by deed, *e.g.* in a transfer, they may by reference be made applicable to mortgages made before 1912: see next sub-s.

(3) The provisions of this Act relating to the foregoing powers, comprised either in this section, or in any other section regulating the exercise of those powers, may be varied or extended by the mortgage deed, and, as so varied or extended, shall, as far as may be, operate in the like manner and with all the like incidents, effects, and consequences, as if such variations or extensions were contained in this Act.

This reproduces C. A., 1881, s. 19 (2).

Variation of statutory powers.

See *Richards* v. *Overseers of Kidderminster,* 1896, 2 Ch. 212, 219.

(4) This section applies only if and as far as a contrary intention is not expressed in the mortgage deed, and has effect subject to the terms of the mortgage deed and to the provisions therein contained.

Contrary intention.

This reproduces C. A., 1881, s. 19 (3).

For a case where a special power of sale was held not to exclude the statutory power, see *Life Interest, &c. Corporation* v. *Hand-in-Hand, &c. Society,* 1898, 2 Ch. 230, 239.

(5) Save as otherwise provided, this section applies where the mortgage deed is executed after the thirty-first day of December, eighteen hundred and eighty-one.

"Save as otherwise provided": see sub-s. (2). Extent of s.

This reproduces C. A., 1881, s. 19 (4).

(6) The power of sale conferred by this section includes such power of selling the estate in fee simple or any leasehold reversion as is conferred by the provisions of this Act relating to the realisation of mortgages.

This refers to ss. 88 and 89, *sup.*; see notes thereto. Power to sell fee simple or head term.

102.—(1) A person who was before the commencement of this Act a mortgagee of an undivided share in land shall have the same power to sell his share in the proceeds of sale of the land and in the rents and profits thereof until sale, as, independently of this Act, he would have had in regard to the share in the land; and shall also have a right to require the trustees for sale in whom the land is vested to account to him for the income attributable to that share or to appoint a receiver to receive the same from such trustees corresponding to the right which, independently of this Act, he would have had to take possession or to appoint a receiver of the rents and profits attributable to the same share. Provision as to mortgages of undivided shares in land.

Undivided shares can take effect only behind a trust for sale of the entirety: s. 34, *sup.*; 1st Sch., Pt. IV., *inf.*; and S. L. A., 1925, s. 36. Undivided shares.

It follows that the power to sell and appoint a receiver as respects the share in the proceeds of sale and rents and profits until sale had to be conferred to maintain the position. The fact that the entirety of the land will, after 1925, be sold instead of undivided shares, must result, in effect, in a larger aggregate price being obtained. Power to sell and appoint a receiver.

For the other rights of former mortgagees of undivided shares, see 1st Sch., Pt. IV., para. 1 (4) (iii) (consent to appointment of trustees), (7) (mortgagee of all the shares), (9) (consent to sale and exercise of powers). Other rights of mortgagees.

(2) The powers conferred by this section are exercisable by the persons deriving title under such mortgagee.

This is to meet the difficulty which might have arisen by reason of the expression "person who was before the commencement of this Act a mortgagee" in sub-s. (1). As a rule "mortgagee" includes the persons deriving title under him: s. 205 (1) (xvi). "Mortgagee."

Regulation of exercise of power of sale.

103. A mortgagee shall not exercise the power of sale conferred by this Act unless and until—

(i) Notice requiring payment of the mortgage money has been served on the mortgagor or one of two or more mortgagors, and default has been made in payment of the mortgage money, or of part thereof, for three months after such service; or

This s. replaces the C. A., 1881, s. 20.

Notice. As to giving notice, see s. 196.

Waiver. The right to receive notice may be waived: *Re Thompson & Holt*, 1890, 44 Ch. D. 492.

Three months default. The notice should require payment simply without fixing any date, but, if the notice fixes a date, this does not postpone the time at which default begins, so as to make the three months run from that date: *Barker* v. *Illingworth*, 1908, 2 Ch. 20.

How and to whom to be given. Where a first mortgage contained a power of sale with a proviso that the power should not be exercised without giving notice to the mortgagor or his *assigns*, the mortgagee having received notice of a second mortgage was held liable in damages to the second mortgagee for not giving him notice before selling: *Hoole* v. *Smith*, 1881, 17 Ch. D. 434, and notice to the mortgagor alone was held insufficient, but it was not decided whether notice to the second mortgagee alone would have been sufficient. After 1925 a search for "puisne" mortgages should be made before the notice is given: L. C. A., 1925, s. 10, Class C. (i); also s. 198, *inf.*, so that the notice can be given to the first subsequent incumbrancer. It is conceived that the mortgagor is not entitled to burden his mortgagee with more than one notice, at least where it is to be given to the mortgagor *or* his assigns. As "mortgagor" includes "any person entitled to redeem according to his estate, interest, or right in the mortgaged property," the expression "one of several mortgagors" means, it is conceived, "one of the several persons entitled, &c., according to his estate," &c., and that it is sufficient if notice of sale be given to the first subsequent incumbrancer who has given notice of his security to the mortgagee who sells.

Mode of excluding this s. Where an immediate power of sale is desired without notice and without the other restrictions in this s., the proper course is to agree that the mortgagee shall have the power of sale conferred by this Act, but without the restrictions on the exercise thereof imposed by this s.

Computation of broken month. "Month" means calendar month: Interp. A., 1889, s. 3; see also s. 61, *sup.* Where the months are broken the computation of a calendar month runs from the end of a given day in one month to the end of the day with the corresponding number in the ensuing month: *Freeman* v. *Read*, 1863, 11 W. R. 802. The first day is excluded: *Young* v. *Higgon*, 1840, 6 M. & W. 49; *Re Railway Sleepers Supply Co.*, 1885, 29 Ch. D. 204; *South Staffs. Tramways Co.* v. *Sickness, &c. Assocn.*, 1891, 1 Q. B. 402.

(ii) Some interest under the mortgage is in arrear and unpaid for two months after becoming due; or

Interest in arrear for two months. Compare "is" with "has been" in cl. (iii). Interest must be in arrear, &c. at the time when the power of sale is exercised, not necessarily when the conveyance is executed.

When there is no covenant for payment of interest, after the principal becomes due, there would still, it would seem, be interest accruing, at the old rate, "under the mortgage" as "redemption money": see *Cook* v. *Fowler*, 1874, L. R. 7 H. L. 27; *Re Roberts*, 1880, 14 Ch. D. 49, at p. 52; *Re Frisby*, 1889, 43 Ch. D. 106, at p. 114; *Mellersh* v. *Brown*, 1890, 45 Ch. D. 225. Such interest accrues due from day to day, and "some interest" would, it is conceived, be "in arrear and unpaid" under this sub-s. at any time when no interest had been paid for more than two months. Interest where no covenant.

Where there was a covenant to pay by instalments, which included interest, and an instalment was in arrear for two months, it was held that interest was in arrear for two months within this s.: *Walsh* v. *Derrick*, 1903, 19 T. L. R. 209. Instalments.

As to the question whether interest is in arrear, when none has been actually paid by the mortgagor, but the mortgagee has gone into possession and received the rents, see *Cockburn* v. *Edwards*, 1881, 18 Ch. D. 449; *Wrigley* v. *Gill*, 1906, 1 Ch. 165, 172, 177, 179. Mortgagee in possession.

(iii) There has been a breach of some provision contained in the mortgage deed or in this Act, or in an enactment replaced by this Act, and on the part of the mortgagor, or of some person concurring in making the mortgage, to be observed or performed, other than and besides a covenant for payment of the mortgage money or interest thereon.

The "enactment replaced by this Act" is the C. A., 1881.

Under this sub-s. the power of sale becomes exercisable on breach of a provision which the mortgagor ought to observe, as, for instance, in a mortgage of a life interest and policy of assurance, on a breach of the covenant as to keeping the policy on foot, or such a statutory provision as in s. 99 (11) (non-delivery of counterpart). Breach by mortgagor.

104.—(1) A mortgagee exercising the power of sale conferred by this Act shall have power, by deed, to convey the property sold, for such estate and interest therein as he is by this Act authorised to sell or convey or may be the subject of the mortgage, freed from all estates, interests, and rights to which the mortgage has priority, but subject to all estates, interests, and rights which have priority to the mortgage. Conveyance on sale.

This s. reproduces C. A., 1881, s. 21 (1) (2), as amended by the C. A., 1911, s. 5 (1).

As to the estate to be conveyed in the case of a freehold mortgage: s. 88, *sup.*; in that of a leasehold mortgage: s. 89, *sup.* Estate conveyed by mortgagee.

For a form of conveyance under the power: 5th Sch., Form No. 4; the vendor can convey in the name of the mortgagor, but will usually convey in his own name. Form of conveyance.

He can convey the head term, and the mortgage term (if any) will be extinguished, save where the mortgage affects part only of the land comprised in a lease and the rent has not been apportioned: s. 89 (6). In this case the mortgagee should take an irrevocable power of attorney under s. 126, *inf.*, to As to leaseholds.

enable him to convey the head term. As to the title a purchaser is entitled to require: s. 42, *sup.*

Former power to convey under Lord Cranworth's Act.

Under s. 15 of Lord Cranworth's Act it was held in *Hiatt* v. *Hillman,* 1871, 19 W. R. 694, that a mortgagee by sub-demise of leaseholds could assign the whole of the original term, and in *Re Solomon & Meagher,* 1889, 40 Ch. D. 508, that an equitable mortgagee, selling after 1881 under that Act, could convey the legal estate.

Equitable mortgagees.

No such power is now given to equitable mortgagees; they must apply to the court under s. 90, *sup.*, unless they have an irrevocable power of attorney under s. 126. The power given by s. 89 to convey the head term is given only to legal mortgagees, but it will be noted that all mortgagees by demise, sub-demise and charge by way of legal mortgage will be legal mortgagees.

(2) Where a conveyance is made in exercise of the power of sale conferred by this Act, or any enactment replaced by this Act, the title of the purchaser shall not be impeachable on the ground—

(a) that no case had arisen to authorise the sale; or

(b) that due notice was not given; or

(c) where the mortgage is made after the commencement of this Act, that leave of the court, when so required, was not obtained; or

(d) whether the mortgage was made before or after such commencement, that the power was otherwise improperly or irregularly exercised;

and a purchaser is not, either before or on conveyance, concerned to see or inquire whether a case has arisen to authorise the sale, or due notice has been given, or the power is otherwise properly and regularly exercised; but any person damnified by an unauthorised, or improper, or irregular exercise of the power shall have his remedy in damages against the person exercising the power.

Protection of purchaser.

"Leave of the court."

Para. (c) is new; it does not apply to the restrictions imposed by Courts (Emergency Powers) Acts, 1914—19, for these ceased to have effect after 31st Aug., 1922: War Emergency Laws (Continuance) A., 1920, 1st Sch.; nor to the restrictions imposed by the Inc. of Rent and Mtge. Int. (Restrictions) A., 1920, s. 7, for these do not apply to mortgages made after 1st July, 1920.

"Either before or on conveyance."

The last para. of this sub-s. meets the decision in *Life Int., &c. Corp.* v. *Hand-in-Hand Soc.,* 1898, 2 Ch. 230.

Notice of irregularity.

This sub-s. will not protect a purchaser buying with notice of impropriety or irregularity in the exercise of the power: *Parkinson* v. *Hanbury,* 1860, 1 Dr. & Sm. 143; *Selwyn* v. *Garfit,* 1888, 38 Ch. D. 273; *Re Thompson & Holt,* 1890, 44 Ch. D. 492; *Bailey* v. *Barnes,* 1894, 1 Ch. 25; *Re Tritton,* 1891, W. N. 194.

Registered land.

Subject to an entry to the contrary on the register, a registered proprietor of a charge may exercise the powers of an ordinary mortgagee: L. R. A., 1925, s. 34.

(3) A conveyance on sale by a mortgagee, made after the commencement of this Act, shall be deemed to have been made in exercise of the power of sale conferred by this Act unless a contrary intention appears.

Reference to statutory power.

This sub-s. is new; it alters the rule in C. A., 1881, s. 21 (2), that the conveyance should be made "in professed exercise of the power of sale" in order that the purchaser should obtain the statutory protection; still the power will no doubt in practice be generally referred to in the operative part: 5th Sch., Form No. 4.

Application of proceeds of sale.

105. The money which is received by the mortgagee, arising from the sale, after discharge of prior incumbrances to which the sale is not made subject, if any, or after payment into court under this Act of a sum to meet any prior incumbrance, shall be held by him in trust to be applied by him, first, in payment of all costs, charges, and expenses properly incurred by him as incident to the sale or any attempted sale, or otherwise; and secondly, in discharge of the mortgage money, interest, and costs, and other money, if any, due under the mortgage; and the residue of the money so received shall be paid to the person entitled to the mortgaged property, or authorised to give receipts for the proceeds of the sale thereof.

This s. replaces C. A., 1881, s. 21 (3).

As to paying prior charges.

Under this s. the mortgagee is authorised not merely to discharge prior incumbrances, but to pay the sum required under s. 50, *sup.*, to be paid into court to answer them. He can then sell free from incumbrances. The last words of this s. include a subsequent incumbrancer: s. 107. Accordingly a first mortgagee must pay any surplus to the second mortgagee, and cannot set up, against the second mortgagee, on behalf of the mortgagor s. 42 of the R. P. Limitation A., 1833: *Re Thomson.* 1920, 1 Ch. 508.

Surplus to subsequent incumbrancer.

"Authorised to give receipts."

The trustees of a settlement for the purposes of the S. L. A., 1925, are entitled to receive the residue where settled land has been sold by a mortgagee under his power of sale.

As to payment of surplus.

The mortgagee must take care that he pays the surplus to the right person: see *W. London Commercial Bk.* v. *Reliance Bg. Soc.*, 1884, 27 Ch. D. 187; 29 *ib.* 954. This is a liability which as trustee of the residue he cannot avoid, but in a doubtful case he can pay the money into court under T. A., 1925, s. 63, or invest it for the benefit of the persons entitled: *Charles* v. *Jones,* 1887, 35 Ch. D. 544, 550; otherwise he must pay interest thereon at 4 per cent.: *S. C.*, and *Eley* v. *Read,* 1897, 76 L. T. 39. For a successful defence, where a trustee, through mistake of fact, paid money to the wrong person, see *Re Allsop,* 1914, 1 Ch. 1; in this case the defence was based on the Jud. T. A., 1896, s. 3 (now T. A., 1925, s. 61), and the T. A., 1888, s. 8.

And as to claims to surplus of sale money being statute barred or not, see *Banner* v. *Berridge,* 1881, 18 Ch. D. 254, pp. 260—270; *Soar* v. *Ashwell,* 1893, 2 Q. B. 390; *Thorne* v. *Heard,* 1894, 1 Ch. 599; 1895, A. C. 495; and as to constructive notice of second mortgage, *S. C.*, p. 501.

Provisions as to exercise of power of sale.

106.—(1) The power of sale conferred by this Act may be exercised by any person for the time being entitled to receive and give a discharge for the mortgage money.

(2) The power of sale conferred by this Act does not affect the right of foreclosure.

(3) The mortgagee shall not be answerable for any involuntary loss happening in or about the exercise or execution of the power of sale conferred by this Act, or of any trust connected therewith, or, where the mortgage is executed after the thirty-first day of December, nineteen hundred and eleven, of any power or provision contained in the mortgage deed.

This s. replaces C. A., 1881, s. 21, sub-ss. (4) to (7), as amended by C. A., 1911, s. 5 (2).

Effect of sub-mortgage.

Though, after a sub-mortgage, the person entitled to receive the mortgage money is the sub-mortgagee, who can therefore by virtue of this sub-s. exercise the statutory power of sale, yet it is conceived that there is nothing in this sub-s. to deprive the sub-mortgagor of the statutory power already vested in him; but he could only sell with the sub-mortgagee's consent.

Assignment of part of mortgage.

Where part of a mortgage debt is assigned, the part assigned being postponed to the part retained and the assignee being given no power to give receipts, the assignor can exercise the power of sale: *Flower & Sons, Ltd.* v. *Pritchard*, 1909, 53 Sol. J. 178.

This sub-s. does not apply to a person merely entitled to give a discharge as agent: *Re Dowson & Jenkins*, 1904, 2 Ch. 219; as to registered land: see L. R. A., 1925, s. 34.

Involuntary losses.

Probably an involuntary losses clause was never necessary, but owing to the provisions of sub-s. (3) any excuse for such a clause in mortgages executed after 1911 has been abolished.

Mortgagee not a trustee for sale.

A mortgagee in exercising his power of sale, though under certain obligations to the mortgagor, is not a trustee for him, even in cases where the mortgage is in the form of a trust for sale: see *Warner* v. *Jacob*, 1882, 20 Ch. D. 220; *Farrar* v. *Farrars, Ltd.*, 1888, 40 *ib.* 395, 410, 411; *Tomlin* v. *Luce*, 1889, 43 *ib.* 191; *Kennedy* v. *De Trafford*, 1896, 1 Ch. 762, 778; 1897, A. C. 180; *Nutt* v. *Easton*, 1899, 1 Ch. 873; *Belton* v. *Bass*, 1922, 2 Ch. 449, 465.

Leaving part of money on mortgage.

As to a sale on the terms of part (or even the whole) of the purchase money remaining on mortgage, see *Davey* v. *Durrant*, 1857, 1 De G. & J. 535, 553; *Belton* v. *Bass*, *sup.* See also T. A., 1925, s. 10 (2).

Conveyance by sub-mortgagee.

As to the effect of conveyances by sub-mortgagees, see ss. 88 (5), 89 (5), *sup.*

(4) At any time after the power of sale conferred by this Act has become exercisable, the person entitled to exercise the power may demand and recover from any person, other than a person having in the mortgaged property an estate, interest, or right in priority to the mortgage, all the deeds and documents relating to the property, or to the title thereto, which a purchaser under

the power of sale would be entitled to demand and recover from him.

Production of deeds. Recovery of deeds. Discharge of prior incumbrance.

On a sale by a second or subsequent mortgagee, being a person entitled to redeem (see definition of "mortgagor," s. 205 (1) (xvi)), he can, as against a prior mortgagee, under deed subsequent to 1881, obtain production of the title deeds so as to show the title: s. 97 (1), *sup.*; and having made the proper payments under s. 50 to answer all prior incumbrancers, he is entitled under this sub-s. to recover the title deeds from the first mortgagee, whose mortgage term would then cease: s. 116.

Mortgagee's receipts, discharges, &c.

107.—(1) The receipt in writing of a mortgagee shall be a sufficient discharge for any money arising under the power of sale conferred by this Act, or for any money or securities comprised in his mortgage, or arising thereunder; and a person paying or transferring the same to the mortgagee shall not be concerned to inquire whether any money remains due under the mortgage.

This s. replaces C. A., 1881, s. 22. See also note to s. 101 (1), *sup.*

This s. applies only to a mortgagee whose mortgage is made by deed after 1881. The supposed mortgagee is one who has a power of sale conferred by this Act, which a mortgagee before 1882 has not: see s. 101 (5).

Mortgagee's receipt valid though security satisfied.

The receipt of the mortgagee is a complete protection to a *bonâ fide* purchaser without notice, even though the security should prove to have been satisfied: *Dicker* v. *Angerstein*, 1876, 3 Ch. D. 600.

But the person asked by the mortgagee to pay or transfer is not bound to do so without inquiry, if he chooses, as to the state of the account: *Re Bell*, 1896, 1 Ch. 1; *Hockey* v. *Western*, 1898, 1 Ch. 350.

Notice of trusts.

A purchaser dealing in good faith with a mortgagee is not affected by any trusts of the mortgage money of which he has notice, and may assume that the mortgagees are entitled to the purchase money and can give receipts: s. 113.

(2) Money received by a mortgagee under his mortgage or from the proceeds of securities comprised in his mortgage shall be applied in like manner as in this Act directed respecting money received by him arising from a sale under the power of sale conferred by this Act, but with this variation, that the costs, charges, and expenses payable shall include the costs, charges, and expenses properly incurred of recovering and receiving the money or securities, and of conversion of securities into money, instead of those incident to sale.

Application of money.

As to application of money arising from a sale "under this Act," see s. 105, *sup.*

Mortgagee's receipt for surplus sale money and securities.

This s. enables a mortgagee to give a discharge, not only for money arising by sale, but also for money or securities assigned by the mortgage or arising thereunder; for instance, to give a receipt for the surplus on a sale by a prior mortgagee, or in case of a mortgage of a policy or of a reversionary interest in stock, to give a receipt for the policy money or for the stock, and to apply the money in discharge of the debt and costs, and in case of stock, to sell the stock for that purpose.

Amount and application of insurance money.

108.—(1) The amount of an insurance effected by a mortgagee against loss or damage by fire under the power in that behalf conferred by this Act shall not exceed the amount specified in the mortgage deed, or, if no amount is therein specified, two third parts of the amount that would be required, in case of total destruction, to restore the property insured.

Amount.

This s. replaces C. A., 1881, s. 23, with amendments.

Power to insure (see s. 101 (1) (ii), *sup.*) only extends to fire risks.

(2) An insurance shall not, under the power conferred by this Act, be effected by a mortgagee in any of the following cases (namely):

(i) Where there is a declaration in the mortgage deed that no insurance is required:

(ii) Where an insurance is kept up by or on behalf of the mortgagor in accordance with the mortgage deed:

(iii) Where the mortgage deed contains no stipulation respecting insurance, and an insurance is kept up by or on behalf of the mortgagor with the consent of the mortgagee to the amount to which the mortgagee is by this Act authorised to insure.

Contrary intention.

The words "with the consent of the mortgagee" in para. (iii) are new. The object is to give the mortgagee notice of the insurance maintained by the mortgagor.

"To the amount," &c.: see last sub-s.

(3) All money received on an insurance of mortgaged property against loss or damage by fire or otherwise effected under this Act, or any enactment replaced by this Act, or on an insurance for the maintenance of which the mortgagor is liable under the mortgage deed, shall, if the mortgagee so requires, be applied by the mortgagor in making good the loss or damage in respect of which the money is received.

This sub-s. down to the words "mortgage deed" has been redrafted in more general terms.

Application to make good damages.

Under this sub-s. all money received in respect of any insurance for the maintenance of which the mortgagor is liable under the mortgage deed, *e.g.*, against fire, aircraft, or theft of chattels in a house, and in respect of any insurance which the mortgagee may maintain under s. 101 (1) (ii), *sup.*, is applicable for reinstatement.

Renewal of policy.

Where a mortgagor covenants to insure, and after the mortgage renews a policy, effected before the mortgage, the insurance is one "for the maintenance

of which the mortgagor is liable under the mortgage": *Sinnott* v. *Bowden*, 1912, 2 Ch. 414.

(4) Without prejudice to any obligation to the contrary imposed by law, or by special contract, a mortgagee may require that all money received on an insurance of mortgaged property against loss or damage by fire or otherwise effected under this Act, or any enactment replaced by this Act, or on an insurance for the maintenance of which the mortgagor is liable under the mortgage deed, be applied in or towards the discharge of the mortgage money.

"Obligation to the contrary."

The last sub-s. gives powers to the mortgagee, hence is not an "obligation to the contrary."

When insurance money to be expended on reinstating at the instance of others.

S. 83 of the Fires Prevention (Metropolis) Act, 1774, however, enacted that insurance money on houses and buildings must at the request of *any person interested*, or may, in cases of suspicion, be applied in reinstating them. The application of that s. is general and not confined to the Metropolis: *Ex p. Gorely*, 1864, 4 D. J. & S. 477; *Re Quicke*, 1908, 1 Ch. 887; *Sinnott* v. *Bowden*, 1912, 2 Ch. 414; it applies as between mortgagor and mortgagee: *Sinnott* v. *Bowden*, *sup.* The doubts expressed on those points in *Westminster Fire Office* v. *Glasgow*, *&c. Society*, 1888, 13 A. C. 699, 714, may be disregarded. A mortgagor cannot get rid of the rights of the mortgagee under this s. by himself parting with the right to receive the money: *Sinnott* v. *Bowden*, *sup.*

Discharge of mortgage money.

Subject to the obligations as to reinstatement, this sub-s. gives power to pay the mortgage debt out of the insurance money.

109.—(1) A mortgagee entitled to appoint a receiver under the power in that behalf conferred by this Act shall not appoint a receiver until he has become entitled to exercise the power of sale conferred by this Act, but may then, by writing under his hand, appoint such person as he thinks fit to be receiver.

Appointment, powers, remuneration and duties of receiver.

This s. replaces C. A., 1881, s. 24, with amendments.

For power to appoint a receiver: s. 101 (1) (iii); "entitled to exercise the power of sale": s. 103.

(2) A receiver appointed under the powers conferred by this Act, or any enactment replaced by this Act, shall be deemed to be the agent of the mortgagor; and the mortgagor shall be solely responsible for the receiver's acts or defaults unless the mortgage deed otherwise provides.

Receiver as agent for mortgagor.

Position of receiver.

See as to the authority of a receiver as agent, *Re Hale*, 1899, 2 Ch. 107; *semble*, a receiver could not under this s. alone pay an unsecured debt due by the mortgagor to the mortgagee. See generally as to the position of a receiver under this Act, *White* v. *Metcalf*, 1903, 2 Ch. 567; and compare the dicta in *Jefferys* v. *Dickson*, 1866, 1 Ch. 183, at p. 190; *Law* v. *Glenn*, 1867, 2 Ch. 634, at p. 641. See also *Gaskell* v. *Gosling*, 1896, 1 Q. B. 669, at p. 691 *et seq.*

Personal liability. As to a receiver's personal liability to creditors and others, see and compare *Owen* v. *Cronk*, 1895, 1 Q. B. 265, and *Burt* v. *Bull*, *ib.* 276.

Determination of agency. A receiver appointed under this s. ceases to be the agent of the mortgagor if he is subsequently appointed receiver by the court in an action by the mortgagee to enforce his security: *Hand* v. *Blow*, 1901, 2 Ch. 721, 732; or, if the mortgagor is a company, on a winding-up order being made: *Gosling* v. *Gaskell*, 1897, A. C. 575; but on such winding-up he does not *ipso facto* become the agent of the mortgagees who appointed him: *S. C.*

Debentures. Where, as is usual in debentures and debenture trust deeds, the instrument contains an express power to appoint a receiver, this s. being incorporated in the same instrument as varied and extended by the provisions thereof, and the receiver is not stated to be the agent of the mortgagor, it is a question of construction in each case whether he is the agent of the mortgagor or of the mortgagees: *Deyes* v. *Wood*, 1911, 1 K. B. 806.

Change of occupancy. As to the entry into possession of a receiver creating a change of occupancy within s. 16 of the Poor Rate Assessment and Collection Act, 1869, see *Richards* v. *Kidderminster Overseers*, 1896, 2 Ch. 212; *Re Marriage, Neave & Co.*, *ib.* 663.

Book debts. The appointment of a receiver is not sufficient to take book debts out of the order and disposition of a bankrupt, unless followed by notice to the debtors within a reasonable time: *Rutter* v. *Everett*, 1895, 2 Ch. 872.

Leasing and powers to accept surrenders. When the receiver is appointed, the mortgagee becomes entitled to exercise the statutory powers of leasing and accepting surrenders of leases, and may delegate those powers to the receiver: ss. 99 (19), 100 (13).

Power to insure. The power to insure (s. 101 (1) (ii); see also s. 108) may be delegated to the receiver: sub-s. (7), *inf.*

(3) The receiver shall have power to demand and recover all the income of which he is appointed receiver, by action, distress, or otherwise, in the name either of the mortgagor or of the mortgagee, to the full extent of the estate or interest which the mortgagor could dispose of, and to give effectual receipts accordingly for the same, and to exercise any powers which may have been delegated to him by the mortgagee pursuant to this Act.

Power to recover income. "The income": see note to s. 101 (1) (iii), which enlarges the meaning of "income."

Under this sub-s. the receiver acts subject to the rights of any prior mortgagee and to the powers of his receiver: see note to sub-s. (8).

"Distress." Where a receiver under this Act has been appointed, the mortgagor cannot distrain without the receiver's authority, even if the receiver neglects or refuses to do so: *Bayly* v. *Went*, 1884, 51 L. T. 764; *Woolston* v. *Ross*, 1900, 1 Ch. 788.

"In the name of the mortgagor." Where a mortgagor died before 1898, having devised the mortgaged land to two trustees, one of whom predeceased him and the other of whom disclaimed, and the mortgagee appointed a receiver under the statutory power, held that the receiver could sue for rent in the name of the mortgagor's heir-at-law upon giving sufficient indemnity: *Fairholme* v. *Kennedy*, 1889, 24 L. R. Ir. 498.

(4) A person paying money to the receiver shall not be concerned to inquire whether any case has happened to authorise the receiver to act.

Indemnity to payee. This replaces C. A., 1881, s. 24 (4).

(5) The receiver may be removed, and a new receiver may be appointed, from time to time by the mortgagee by writing under his hand.

This replaces C. A., 1881, s. 24 (5).

Removal of receiver.

(6) The receiver shall be entitled to retain out of any money received by him, for his remuneration, and in satisfaction of all costs, charges, and expenses incurred by him as receiver, a commission at such rate, not exceeding five per centum on the gross amount of all money received, as is specified in his appointment, and if no rate is so specified, then at the rate of five per centum on that gross amount, or at such other rate as the court thinks fit to allow, on application made by him for that purpose.

This replaces C. A., 1881, s. 24 (6).

Rate of remuneration.

(7) The receiver shall, if so directed in writing by the mortgagee, insure to the extent, if any, to which the mortgagee might have insured and keep insured against loss or damage by fire, out of the money received by him, any building, effects, or property comprised in the mortgage, whether affixed to the freehold or not, being of an insurable nature.

The words "to the extent, if any, to which the mortgagee might have insured" are new: see s. 108 (1) (2).

Insurance by receiver.

(8) Subject to the provisions of this Act as to the application of insurance money, the receiver shall apply all money received by him as follows, namely:

(i) In discharge of all rents, taxes, rates, and outgoings whatever affecting the mortgaged property; and

(ii) In keeping down all annual sums or other payments, and the interest on all principal sums, having priority to the mortgage in right whereof he is receiver; and

(iii) In payment of his commission, and of the premiums on fire, life, or other insurances, if any, properly payable under the mortgage deed or under this Act, and the cost of executing necessary or proper repairs directed in writing by the mortgagee; and

(iv) In payment of the interest accruing due in respect of any principal money due under the mortgage; and

(v) In or towards discharge of the principal money if so directed in writing by the mortgagee;

and shall pay the residue, if any, of the money received by him to the person who, but for the possession of the receiver, would have been entitled to receive the income of which he is appointed receiver, or who is otherwise entitled to the mortgaged property.

Application of money in hands of receiver.

Para. (v) is new. It gives effect to a common practice of authorising a receiver to pay off the debt before accounting to the person entitled to the right of redemption.

Variation of application by agreement.

The statutory mode of application can be varied by consent of the parties concerned: *Yourell* v. *Hibernian Bk.*, 1918, A. C. 372.

Position of a receiver.

The power to appoint a receiver is by s. 101 (1) given to the mortgagee to the like extent as if in terms conferred by the mortgage deed. The receiver of a second or subsequent mortgagee will therefore (see sub-s. (3), *sup.*) be liable to be superseded by the receiver of a prior mortgagee when appointed, but the receiver for the time being, whether under a first or any subsequent mortgage, will, it is conceived, have under sub-ss. (3) and (4) power to recover and give a legal discharge for rent.

Power to appoint, how proved.

To prove that the person appointing the receiver is actually a mortgagee, the mortgage deed must be produced. Where it is desired to avoid this, a counterpart or an attested copy of the mortgage may be taken. As mortgage deeds are now short, the cost of a counterpart is much less than that of the old receivership deed.

Repairs by receiver.

Any necessary or proper repairs which a mortgagee could not himself make, unless expressly authorised, without incurring the liability of a mortgagee in possession, may be made by the receiver, if directed in writing by the mortgagee under para. (iii); and see *White* v. *Metcalf*, 1903, 2 Ch. 567.

Appointment by court.

When an action is pending the receiver should be appointed by the court, and not under this Act: *Tillett* v. *Nixon*, 1883, 25 Ch. D. 238; but in the winding-up of a company the court will give leave to take possession to a receiver appointed by debenture holders after the date of the winding-up order: *Re Henry Pound, Son, & Hutchins*, 1889, 42 Ch. D. 402.

Appointment after mortgagee in possession.

Semble, a mortgagee can appoint a receiver under the Act after going into possession: *Tillett* v. *Nixon, sup.*; *Gloucester County Bank* v. *Rudry & Co.*, 1895, 1 Ch. 629; but by so doing he does not free himself from the liabilities of a mortgagee in possession: *Re Prytherch*, 1889, 42 Ch. D. 590.

"Interest accruing due."

Where there is no covenant for payment of interest after the principal is due, as to what is "the interest accruing due," see note to s. 103 (ii), *sup.*

The interest which, under para. (iv), the receiver is to pay, is not only that accruing after his appointment, but any arrears: *National Bank* v. *Kenney*, 1898, 1 Ir. R. 197; provided they are not statute barred: *Hibernian Bank* v. *Yourell*, 1919, 1 Ir. R. 310.

Mortgage of a business.

In a mortgage of a business the receiver should be given additional powers to manage and carry on the business, and pay and receive debts due by or to the mortgagor in respect thereof: see *Re Hale*, 1899, 2 Ch. 107; *Rutter* v. *Everett*, 1895, 2 Ch. 872.

Effect of bankruptcy of the mort-

110.—(1) Where the statutory or express power for a mortgagee either to sell or to appoint a receiver is made

exercisable by reason of the mortgagor committing an act of bankruptcy or being adjudged a bankrupt, such power shall not be exercised only on account of the act of bankruptcy or adjudication, without the leave of the court. gagor on the power to sell or appoint a receiver.

(2) This section applies only where the mortgage deed is executed after the commencement of this Act; and in this section "act of bankruptcy" has the same meaning as in the Bankruptcy Act, 1914.

This s. is new. The object is to prevent unconscionable use being made of an extension of the events in which the power of sale (statutory or express) or to appoint a receiver is made exerciseable: see the words "with the leave of the court." Object of s.

But though in such a case leave has to be obtained this does not concern a purchaser: s. 104 (2) (c); for the protection is only afforded where the mortgage is made after 1925: sub-s. (2), *sup.* "With the leave of the court."

The s. does not affect the exercise of the power of sale, &c. where an event within s. 103, *sup.*, has occurred, notwithstanding that the mortgagor may also be a bankrupt.

For meaning of "act of bankruptcy": Bkcy. A., 1914, s. 1. "Act of bankruptcy."

111.—(1) Where— Effect of advance on joint account.

(a) in a mortgage, or an obligation for payment of money, or a transfer of a mortgage or of such an obligation, the sum, or any part of the sum, advanced or owing is expressed to be advanced by or owing to more persons than one out of money, or as money, belonging to them on a joint account; or

(b) a mortgage, or such an obligation, or such a transfer is made to more persons than one, jointly;

the mortgage money, or other money or money's worth, for the time being due to those persons on the mortgage or obligation, shall, as between them and the mortgagor or obligor, be deemed to be and remain money or money's worth belonging to those persons on a joint account; and the receipt in writing of the survivors or last survivor of them, or of the personal representative of the last survivor, shall be a complete discharge for all money or money's worth for the time being due, notwithstanding any notice to the payer of a severance of the joint account.

(2) This section applies if and as far as a contrary intention is not expressed in the mortgage, obligation,

or transfer, and has effect subject to the terms of the mortgage, obligation, or transfer, and to the provisions therein contained.

(3) This section applies to any mortgage obligation or transfer made after the thirty-first day of December, eighteen hundred and eighty-one.

This s. replaces C. A., 1881, s. 61; but the words "and not in shares" (at the end of para. (b)) have been left out as being unnecessary; moreover, a mortgage of a legal estate in land can no longer be made to the mortgagees in undivided shares: s. 34 (2) proviso; the mortgage term will vest in the mortgagees or in the four first named as joint tenants: *ib.*; 1st Sch., Pt. II., paras. 6 (a), 7 (b) (f), 8; Pt. IV., paras. (7), (8); Pts. VII. and VIII.

Advances made of separate sums.

Where two or more mortgagees advance separate sums it is expedient that the aggregate sum should in the first instance be expressed to be advanced jointly, or out of money belonging to them on a joint account, then they can either in the mortgage deed (see s. 113, *inf.*) or by a separate document declare that it is held on the trusts requisite for giving effect to the separate interests.

Registered land.

In the case of registered land the proprietors of a charge for a debt held in undivided shares are treated as if the advance had been made on a joint account: L. R. A., 1925, s. 32.

The principle of a joint account clause is still further extended by s. 112, *inf.*: see note thereto.

Joint account clause, old law.

The express joint account clause had two objects:—

(1) To rebut the presumption in equity that the money was advanced in equal shares, and to convert it into a joint advance.

(2) The advance being originally joint, to enable the money, after the death of one of the persons making the advance, to be paid to the survivors or the survivor, or his representatives, without inquiry whether the joint account had been severed, the clause operating in fact as a contract that a severance (if any) should not affect the right of the survivor to give a receipt. Both these objects are effected by the present s. The s. applies either where the advance is expressly stated to be on a joint account, or where the security (effected after 1925, not consisting of land) is not expressly made to persons in shares, so that an expression of the joint account is not necessary, though it is convenient as a direct statement of the rights of the mortgagees. After 1925 it will be useless to attempt to vest the mortgage term or the legal charge in the mortgagees otherwise than as joint tenants: see note, *sup.* As between the mortgagees the joint account may be rebutted by evidence: *Re Jackson*, 1887, 34 Ch. D. 732.

Payment to one of several joint creditors.

Payment to one of the joint creditors during the other's lifetime discharged the debt at law, but only discharged the security to the extent of the payee's beneficial interest, if any, though he ultimately became the survivor: *Powell* v. *Brodhurst*, 1901, 2 Ch. 160; and see *Matson* v. *Dennis*, 1864, 4 D. J. & S. 345; *Steeds* v. *S.*, 1889, 22 Q. B. D. 537. See now as to trusts affecting mortgage debts: s. 113, *inf.*

Notice of trusts.

A joint account clause was never notice of a trust: *Re Harman & Uxbridge, &c. Ry. Co.*, 1883, 24 Ch. D. 720; but where a purchaser before 1925 had notice that mortgage money was held on the trusts of a settlement of which the mortgagees were not the original trustees he was entitled to evidence that the mortgagees were the duly appointed trustees notwithstanding a joint account clause: *Re Blaiberg & Abrahams*, 1899, 2 Ch. 340.

Recital of trust.

As to a recital that a person was a trustee under some instrument affecting a purchaser with notice of the contents of that instrument, see *Re Chafer & Randall*, 1916, 2 Ch. 8, at pp. 15, 19; also *Re Soden & Alexander*, 1918, 2 Ch. 258.

Notice of trusts on transfer of mortgage.

112.—(1) Where, on the transfer of a mortgage, the stamp duty, if payable according to the amount of the debt transferred, would exceed the sum of ten shillings, a purchaser shall not, by reason only of the transfer bearing a ten-shilling stamp, whether adjudicated or not, be deemed to have or to have had notice of any trust, or that the transfer was made for effectuating the discharge of a trustee or the appointment of a new trustee.

(2) This section applies to transfers made before as well as after the commencement of this Act.

Stamp.

This s. reproduces the C. A., 1911, s. 13; the s. removed the doubt whether if the transfer of a mortgage debt exceeding 2,000*l.* was stamped 10*s.* this of necessity showed that the transfer was made on the discharge or appointment of a new trustee.

The reference to "the discharge of a trustee" is new.

Adjudication.

It will still be necessary to have the stamp adjudicated, for the Inland Revenue are not willing to allow a purchaser to assume that a transfer so stamped is sufficiently stamped. A purchaser will object to investigating the equitable title (see next s.) when the point can be disposed of by adjudication.

Stamp of 10*s.* on conveyance.

The principle of this s. was extended to simple conveyances of land, each stamped 10*s.*, in *Re Soden & Alexander*, 1918, 2 Ch. 258; though in one case, in order to imply a covenant against incumbrances, a grantor was expressed to convey "as trustee": *S. C.*; it would be convenient if the courts held that these words, whether or not the transaction was for value, do not give notice of a trust.

Notice of trusts affecting mortgage debts.

113.—(1) A person dealing in good faith with a mortgagee, or with the mortgagor if the mortgage has been discharged released or postponed as to the whole or any part of the mortgaged property, shall not be concerned with any trust at any time affecting the mortgage money or the income thereof, whether or not he has notice of the trust, and may assume unless the contrary is expressly stated in the instruments relating to the mortgage—

(a) that the mortgagees (if more than one) are or were entitled to the mortgage money on a joint account; and

(b) that the mortgagee has or had power to give valid receipts for the purchase money or mortgage money and the income thereof (including any arrears of interest) and to release or postpone the priority of the mortgage debt or any part thereof or to deal with the same or the mortgaged property or any part thereof;

without investigating the equitable title to the mortgage

debt or the appointment or discharge of trustees in reference thereto.

Object of s.

This s. is new. The object is to get rid of the inconveniences disclosed in *Re Blaiberg & Abrahams*, 1899, 2 Ch. 340; see note to s. 111, *sup.*

The s. applies to property generally, not merely to land; it extends the curtain principle (s. 2, *sup.*) to trusts affecting mortgage debts, whether or not the trusts are disclosed.

"Mortgagee."

The s. applies to a person dealing with a "mortgagee" which includes a chargee by way of legal mortgage (s. 87) and any person deriving title from time to time under the original mortgagee: s. 205 (1) (xvi).

"Mortgagor if the mortgage has been discharged," &c.

It also applies to dealings with the mortgagor "if the mortgage has been discharged, released, or postponed as to the whole or any part of the mortgaged property," for in these cases the mortgagor is or may be the person to make title without the concurrence of the mortgagee.

Joint account.

A joint account of the mortgage money (s. 111, *sup.*) is implied whenever the mortgage was made (sub-s. (2), *inf.*), unless the mortgage deeds expressly provide to the contrary, thus, though s. 111 only applies to mortgages made after 1881, a joint account clause will for the purposes of this s. be implied in mortgages made before 1882.

(2) This section applies to mortgages made before or after the commencement of this Act, but only as respects dealings effected after such commencement.

Retrospective.

The s. could not well be applied to dealings before 1926, for this might have affected subsisting titles.

Tenants for life, &c., powers of.

As to the further powers of tenants for life to deal with mortgages affecting the settled land or other land, and to agree to the variation of the rate of interest, see S. L. A., 1925, ss. 49 (1) (c) (conveyance exonerated from charge), 58 (1) (2) (compromises and releases), 69 (shifting of incumbrances), 70 (variation of provisions in mortgages), 71 (raising of money). These powers are also exerciseable by trustees for sale: s. 28, *sup.*; and by personal representatives: Ad. of E. A., 1925, s. 39.

(3) This section does not affect the liability of any person in whom the mortgage debt is vested for the purposes of any trust to give effect to that trust.

Preservation of beneficial interests.

This s. in effect gives powers to persons in a fiduciary position to give receipts for purchase-money, mortgage money and income, also to release a security from a mortgage debt, to postpone its priority, or to deal with the mortgage debt or the mortgaged property, but does not free them from giving effect to the trusts affecting the mortgage debt. The essential matter is that the person dealing with them should be acting in good faith, though he has notice of a trust.

Transfers of mortgages.

114.—(1) A deed executed by a mortgagee purporting to transfer his mortgage or the benefit thereof shall, unless a contrary intention is therein expressed, and subject to any provisions therein contained, operate to transfer to the transferee—

(a) the right to demand, sue for, recover, and give receipts for, the mortgage money or the unpaid

part thereof, and the interest then due, if any, and thenceforth to become due thereon; and

(b) the benefit of all securities for the same, and the benefit of and the right to sue on all covenants with the mortgagee, and the right to exercise all powers of the mortgagee; and

(c) all the estate and interest in the mortgaged property then vested in the mortgagee subject to redemption or cesser, but as to such estate and interest subject to the right of redemption then subsisting.

Short form of transfer of mortgage.

In this s. the principles in C. A., 1881, s. 27, have been adopted. This s. applies to mortgages of property, not merely of land. For form of transfer (sub-s. (3), *inf.*), see 3rd Sch., Form No. 1. Compare the statutory transfers of statutory mortgages relating only to freeholds and leaseholds in 4th Sch., Forms Nos. 2—4.

(2) In this section "transferee" includes his personal representatives and assigns.

"Transferee."

"Personal representative": s. 205 (1) (xviii).

(3) A transfer of mortgage may be made in the form contained in the Third Schedule to this Act with such variations and additions, if any, as the circumstances may require.

Power to vary form.

The form being of general application, save as mentioned in sub-s. (5), *inf.*, the power to vary was essential.

(4) This section applies, whether the mortgage transferred was made before or after the commencement of this Act, but applies only to transfers made after the commencement of this Act.

Extent of s.

There can, in this case, be no objection in using the short form in the case of transfers of mortgages made before 1926.

(5) This section does not extend to a transfer of a bill of sale of chattels by way of security.

Transfer of bill of sale.

No special form is prescribed by the Bills of Sale Act (1878), Amend. A., 1882, for a transfer of a bill of sale.

Reconveyances of mortgages by endorsed receipts.

115.—(1) A receipt endorsed on, written at the foot of, or annexed to, a mortgage for all money thereby secured, which states the name of the person who pays the money and is executed by the chargee by way of legal mortgage or the person in whom the mortgaged property is vested and who is legally entitled to give a

receipt for the mortgage money shall operate, without any recoveyance, surrender, or release—

(a) Where a mortgage takes effect by demise or sub-demise, as a surrender of the term, so as to determine the term or merge the same in the reversion immediately expectant thereon;

(b) Where the mortgage does not take effect by demise or sub-demise, as a reconveyance thereof to the extent of the interest which is the subject matter of the mortgage, to the person who immediately before the execution of the receipt was entitled to the equity of redemption;

and in either case, as a discharge of the mortgaged property from all principal money and interest secured by, and from all claims under the mortgage, but without prejudice to any term or other interest which is paramount to the estate or interest of the mortgagee or other person in whom the mortgaged property was vested.

This s. is new. It applies to the discharge of a mortgage affecting any class of property. It extends the practice of endorsing receipts on equitable charges to legal mortgages and supplies the requisite machinery.

Evidence of discharge. Though, under s. 116, *inf.*, a mortgage term will cease when the mortgage money is paid off, still evidence of such discharge will be requisite, whether the mortgage is made by demise, sub-demise, charge by way of legal mortgage, or otherwise.

Form of receipt. To comply with the s. the name of the person who pays must be stated and the receipt must be signed by the mortgagee, being a person who is "legally" entitled to give a receipt. This has reference to receipts given by trustee mortgagees: T. A., 1925, s. 14. It is subject to stamp duty: sub-s. (5).

Other receipts. If the receipt does not comply with the requirements of the s. it will not operate as a reconveyance; it will be merely evidence of the discharge and will not carry an *ad valorem* stamp.

(2) Provided that, where by the receipt the money appears to have been paid by a person who is not entitled to the immediate equity of redemption, the receipt shall operate as if the benefit of the mortgage had by deed been transferred to him; unless—

(a) it is otherwise expressly provided; or

(b) the mortgage is paid off out of capital money, or other money in the hands of a personal representative or trustee properly applicable for the discharge of the mortgage, and it is not expressly provided that the receipt is to operate as a transfer.

Operating as a transfer. "As if the benefit of the mortgage" had by deed been transferred to him, this is sufficient to operate as a transfer: s. 114, *sup.*

If a tenant for life pays off a mortgage affecting the settled land out of his own money he ought to take an express transfer if he intends to keep the debt alive, for in some respects he is the person "entitled to the immediate equity of redemption." And see next sub-s.

As to the discharge of incumbrances out of capital money: S. L. A., 1925, s. 73 (1) (ii). Capital money.

(3) Nothing in this section confers on a mortgagor a right to keep alive a mortgage paid off by him, so as to affect prejudicially any subsequent incumbrancer; and where there is no right to keep the mortgage alive, the receipt does not operate as a transfer.

This sub-s. merely saves the principles laid down in *Otter* v. *Ld. Vaux*, 1856, 6 De G. M. & G. 638; here the receipt cannot operate as a transfer. For an example of this: 6th Sch., Epitome No. 5. Where mortgage debt cannot be kept alive.

The right to require a transfer to be made conferred by s. 95, *sup.*, does not prejudice the rights of subsequent incumbrancers.

(4) This section does not affect the right of any person to require a reassignment, surrender, release, or transfer to be executed in lieu of a receipt.

The new method of discharging a mortgage is not made compulsory; the obvious advantages of the new method are sufficient to secure its adoption. Saving.

(5) A receipt may be given in the form contained in the Third Schedule to this Act, with such variations and additions, if any, as may be deemed expedient; and where it takes effect under this section, it shall (subject as hereinafter provided) be liable to the same stamp duty as if it were a reconveyance under seal.

Though the form (see 3rd Sch., Form No. 2) may be varied, the requirements of sub-s. (1), *sup.*, must be complied with. Power to vary form of receipt.

It is immaterial whether the receipt operates as a reconveyance or a transfer; the rate of stamp duty (6*d.* per 100*l.*) is the same in both cases: Stamp A., 1891, 1st Sch., tit. "Mortgage, &c.," paras. (4) and (5). Stamp.

"Subject as hereinafter provided": see sub-s. (9), *inf.*, maintaining the exemption of receipts given by building, &c. societies from stamp duty.

If the receipt does not operate under this s., it will only carry the usual 2*d.* receipt stamp.

(6) In a receipt given under this section the same covenants shall be implied as if the person who executes the receipt had by deed been expressed to convey the property as mortgagee, subject to any interest which is paramount to the mortgage.

Thus if the receipt operates as a surrender, the same covenant (s. 76, *sup.*) will be implied as if the mortgagee had surrendered "as mortgagee"; if it operates as a transfer, as if the mortgagee had transferred the benefit of the mortgage "as mortgagee." Covenants or title.

(7) Where the mortgage consists of a mortgage and a further charge or of more than one deed, it shall be sufficient for the purposes of this section, if the receipt refers either to all the deeds whereby the mortgage money is secured or to the aggregate amount of the mortgage money thereby secured and for the time being owing, and is endorsed on, written at the foot of, or annexed to, one of the mortgage deeds.

Several deeds.

"One of the mortgage deeds": for this purpose a further charge or a transfer is treated as a mortgage deed. See Form No. 2 in 3rd Sch.

(8) This section applies to the discharge of a charge by way of legal mortgage, and to the discharge of a mortgage, whether made by way of statutory mortgage or not, executed before or after the commencement of this Act, but only as respects discharges effected after such commencement.

Retrospective.

Thus, with the exceptions in s. 114 (5) and in sub-s. (10), *inf.*, the receipt can be used in all cases after 1925. The word "discharge" is used in its wide sense; it includes a discharge effected by a transfer, though as against the mortgagor the debt remains alive.

(9) The provisions of this section relating to the operation of a receipt shall (in substitution for the like statutory provisions relating to receipts given by or on behalf of a building, friendly, industrial or provident society) apply to the discharge of a mortgage made to any such society, provided that the receipt is executed in the manner required by the statute relating to the society, but nothing in this section shall render a receipt given by or on behalf of any such society liable to any stamp duty which would not have been otherwise payable.

Building societies, &c., "operation" of receipt.

"In substitution for the like statutory provisions": see in Bldg. Soc. A., 1874, s. 42, the words "and such receipt shall vacate the mortgage or further charge or debt and vest the estate of and in the property therein comprised in the person for the time being entitled to the equity of redemption without any reconveyance or resurrender whatever"; and in Friendly Soc. A., 1896, s. 53 (1), the words "shall vacate the mortgage or assurance and vest the property therein comprised in the person entitled to the equity of redemption in that property, without reconveyance or surrender."

Best right to legal estate.

The provisions of sub-ss. (1) and (2), *sup.*, respecting the "operation" of the receipt are substituted for the enactments above quoted; thus the difficulties arising in *Hosking* v. *Smith*, 1888, 13 A. C. 582 (concealed second mortgage; see also s. 97, *sup.*); *Crosbie Hill* v. *Sayer*, 1908, 1 Ch. 866 (conflict between possession of deeds and purported conveyance of legal estate), as to who had the best right to the legal estate are removed, for the receipt will operate as a surrender or a transfer in accordance with those sub-ss., save as qualified by sub-s. (3).

As to freedom from stamp duty, see Bldg. Soc. A., 1874, s. 41; the same principle applies to receipts by friendly societies: see Friendly Soc. A., 1896, s. 53; Highmore, 3rd ed. 346, 347; there is nothing in this s. to require the receipt to be under seal. Freedom from stamp duty.

(10) This section does not apply to the discharge of a charge or incumbrance registered under the Land Registration Act, 1925.

See L. R. A., 1925, s. 33 (transfers of charges), s. 35 (discharge of registered charges). Registered land.

(11) In this section "mortgaged property" means the property remaining subject to the mortgage at the date of the receipt.

The definition is given to confine the operation of the receipt to property "subject to the mortgage at the date of the receipt." "Mortgaged property."

116. Without prejudice to the right of a tenant for life or other person having only a limited interest in the equity of redemption to require a mortgage to be kept alive by transfer or otherwise, a mortgage term shall, when the money secured by the mortgage has been discharged, become a satisfied term and shall cease. Cesser of mortgage terms.

As to the rights of limited owners to keep alive mortgage debts affecting the inheritance paid off out of their own money: *Shrewsbury* v. *S.*, 1790, 1 Ves. 227; *Re Harvey*, 1896, 1 Ch. 137 (payment by trustees out of rents); *Re Nepean's S. E.*, 1900, 1 Ir. R. 298 (payments by successive tenants for life). Rights of limited owners.

"By transfer or otherwise": thus, as under s. 185, *inf.* (reproducing Jud. A., 1873, s. 25 (4)), there is no merger by operation of law of a legal estate where the beneficial interest would not merge in equity, there is no need for a tenant for life, paying off a charge affecting the inheritance out of his own money, to require a transfer to be made to a trustee for him as evidence of the intention to keep it alive (*Hood* v. *Phillips*, 1841, 3 Beav. 513); it is better to have a declaration against merger, to prevent any question as to intention arising, and to take a transfer direct to the tenant for life. Merger.

As to satisfied terms, see s. 5, *sup.*, extending the principle to sub-terms created out of a leasehold interest; also 1st Sch., Pt. II., para. 1 (cesser of sub-terms on 1st January, 1926), para. 2 (merger of terms which ought to be surrendered). Satisfied terms.

The object of the s. is to prevent titles being rendered complicated by the keeping alive of mortgage terms (see 1st Sch., Pts. VII. and VIII.) after the debt has been discharged. Object of s.

117.—(1) As a special form of charge by way of legal mortgage, a mortgage of freehold or leasehold land may be made by a deed expressed to be made by way of statutory mortgage, being in one of the forms (Nos. 1 or 4) set out in the Fourth Schedule to this Act, with such variations and additions, if any, as circumstances Forms of statutory legal charges.

may require, and if so made the provisions of this section shall apply thereto.

Short forms applicable to freehold and leasehold land.

Charges by way of legal mortgage.

This s. reproduces C. A., 1881, s. 26, with slight amendments in view of the alterations made by s. 87 (charges by way of legal mortgage). These short forms are used widely in small transactions in some parts of the country.

The short Form No. 1 in 4th Sch. is now but little shorter than the full form in 5th Sch., No. 1. The form in the 4th Sch. is only a "special" shortened form of that in the 5th Sch.; they are both "charges by way of legal mortgage."

(2) There shall be deemed to be included, and there shall by virtue of this Act be implied, in such a mortgage deed—

First, a covenant with the mortgagee by the person therein expressed to charge as mortgagor to the effect following, namely:

That the mortgagor will, on the stated day, pay to the mortgagee the stated mortgage money, with interest thereon in the meantime at the stated rate, and will thereafter, if and as long as the mortgage money or any part thereof remains unpaid, pay to the mortgagee (as well after as before any judgment is obtained under the mortgage) interest thereon, or on the unpaid part thereof, at the stated rate, by equal half-yearly payments the first thereof to be made at the end of six months from the day stated for payment of the mortgage money:

Implied covenant to pay principal and interest.

This sub-s. imposes no statutory personal liability on an assignee of the equity of redemption: see *Re Errington*, 1894, 1 Q. B. 11.

Compare the covenants to be implied in registered charges by L. R. A., 1925, s. 28.

The words "as well after as before any judgment is obtained under the mortgage" are new; the object is to provide clearly for the payment of interest at the agreed rate after an order to pay has been made in accordance with *Popple* v. *Sylvester*, 1882, 22 Ch. D. 98; *Economic Life* v. *Usborne*, 1902, A. C. 147. If there is no distinct covenant to pay interest on the amount remaining owing, the security would only be available for the judgment debt and interest. When judgment is obtained for the debt, the original agreement is merged in the judgment debt which only carries interest at 4 per cent.: Jud. A., 1838, s. 17; *Re European, &c. Ry. Co.*, 1876, 4 Ch. D. 33 (where, however, there was no covenant to pay interest after the due date).

Merger of mortgage debt in the judgment.

Secondly, a provision to the following effect (namely):

That if the mortgagor on the stated day pays to the mortgagee the stated mortgage

money, with interest thereon in the meantime at the stated rate, the mortgagee at any time thereafter, at the request and cost of the mortgagor, shall discharge the mortgaged property or transfer the benefit of the mortgage as the mortgagor may direct.

This subsection applies to a mortgage deed made under section twenty-six of the Conveyancing Act, 1881, with a substitution of a reference to "the person therein expressed to convey as mortgagor" for the reference in this subsection to "the person therein expressed to charge as mortgagor."

Implied proviso for redemption.

"Shall discharge the mortgaged property": see s. 115, providing for a discharge by an endorsed receipt. "Or transfer the benefit": see ss. 95 (right to a transfer) and 114 (transfer of "benefit").

The last para. of the sub-s. was originally printed incorrectly; it has been corrected by Corrigenda prefixed to the Act.

Retrospective.

The object of the para. is to make the sub-s. apply to "statutory mortgages" made before 1926 with the substitution mentioned, relating to the alteration of the form from a conveyance subject to a right of redemption to a charge in accordance with s. 87.

Forms of statutory transfers of legal charges.

118.—(1) A transfer of a statutory mortgage may be made by a deed expressed to be made by way of statutory transfer of mortgage, being in such one of the three forms (Nos. 2, 3 or 4) set out in the Fourth Schedule to this Act as may be appropriate to the case with such variations and additions, if any, as circumstances may require, and if so made the provisions of this section shall apply thereto.

This s. replaces C. A., 1881, s. 27.

Application of forms to statutory mortgages.

The statutory transfer is available only where the mortgage is also statutory; the transfer in the statutory form, of a mortgage not in the statutory form, did not pass the legal estate in the mortgaged property: *Re Beachey*, 1904, 1 Ch. 67.

It is conceived, however, that as the operative words "hereby conveys and transfers to —— the benefit of," &c. are the same as in Form No. I. in the 3.d Sch., a transfer made after 1925 would have the effect prescribed in s. 114, even if the mortgage transferred were not a "statutory mortgage."

(2) In whichever of those three forms the deed of transfer is made, it shall have effect as follows (namely):—

(i) There shall become vested in the person to whom the benefit of the mortgage is expressed to

be transferred (who, with his personal representatives and assigns, is in this section designated the transferee), the right to demand, sue for, recover, and give receipts for the mortgage money, or the unpaid part thereof, and the interest then due, if any, and thenceforth to become due thereon, and the benefit of all securities for the same, and the benefit of and the right to sue on all covenants with the mortgagee, and the right to exercise all powers of the mortgagee:

(ii) All the term and interest, if any, subject to redemption, of the mortgagee in the mortgaged land shall vest in the transferee, subject to redemption.

Effect of statutory transfer.

The operation of this sub-s. is similar to that prescribed by s. 114. The mortgagee will either have a term or sub-term, or a charge placing him in the same position as if a mortgage term were vested in him; in the latter case there will be no actual term or interest to vest.

(3) If a covenantor joins in the deed of transfer, there shall also be deemed to be included, and there shall by virtue of this Act be implied therein, a covenant with the transferee by the person expressed to join therein as covenantor to the effect following (namely):

That the covenantor will, on the next of the days by the mortgage deed fixed for payment of interest pay to the transferee the stated mortgage money, or so much thereof as then remains unpaid, with interest thereon, or on the unpaid part thereof, in the meantime, at the rate stated in the mortgage deed; and will thereafter, as long as the mortgage money or any part thereof remains unpaid, pay to the transferee interest on that sum, or the unpaid part thereof, at the same rate, on the successive days by the mortgage deed fixed for payment of interest.

Implied covenant by surety in a statutory transfer.

"On the next of the days": this is equivalent to a covenant by the transferee not to sue until then: *Bolton* v. *Buckenham*, 1891, 1 Q. B. 278. As to its effect on the personal liability of a surety, see that case; and for its effect on the security given by a surety, see *Bolton* v. *Salmon*, 1891, 2 Ch. 48.

This covenant can only be implied in a statutory transfer of a statutory mortgage. In other cases the covenant must be set out.

(4) If the deed of transfer is made in the Form No. 4, it shall, by virtue of this Act, operate not only as a statutory transfer of mortgage, but also as a statutory mortgage, and the provisions of this section shall have effect in relation thereto accordingly; but it shall not be liable to any increased stamp duty by reason only of it being designated a mortgage.

Here, again, the form is only available where the original mortgage was a "statutory mortgage." — Statutory transfer and mortgage combined.

A transfer of a mortgage, though further security is given, is only chargeable with duty as a transfer: Stamp Act, 1870, s. 109 (now replaced by Stamp Act, 1891, s. 87 (3)); *Wale* v. *Commrs. of In. Rev.*, 1879, 4 Ex. D. 270. — Stamp duty on transfer.

(5) This section applies to the transfer of a statutory mortgage created under any enactment replaced by this Act.

Thus the new statutory forms of transfer will apply to "statutory mortgages" made under C. A., 1881, s. 26. — Retrospective.

There is nothing to prevent a transfer being made, if preferred, under s. 114, *sup.*

119. In a deed of statutory mortgage, or of statutory transfer of mortgage, where more persons than one are expressed to convey or charge as mortgagors, or to join as covenantors, the implied covenant on their part shall be deemed to be a joint and several covenant by them; and where there are more mortgagees or more transferees than one, the implied covenant with them shall be deemed to be a covenant with them jointly, unless the amount secured is expressed to be secured to them in shares or distinct sums, in which latter case the implied covenant with them shall be deemed to be a covenant with each severally in respect of the share or distinct sum secured to him. — Implied covenants, joint and several.

This s. replaces C. A., 1881, s. 28, as respects statutory mortgages and transfers, and implies joint and several covenants by the covenantors. — Joint and several covenants by the covenantors.

Under s. 81 (1), *sup.*, a covenant made after 1925, with two or more jointly, will be construed as also being made with each of them.

If it is made before 1926 it will under this s. (s. 119) be with the covenantees jointly or with each severally as stated in that s. If made after 1925 in respect of a distinct sum it would only be with the person or persons advancing that sum. — Covenants with each covenantee.

120. A statutory mortgage may be surrendered or discharged by a receipt in the form (No. 5) set out in — Form of discharge of statutory mortgage or charge.

the Fourth Schedule to this Act with such variations and additions, if any, as circumstances may require.

This s. reproduces C. A., 1881, s. 29, with an amendment consequential on the new form provided by s. 115. Compare Form No. V. in 4th Sch. (relating to a statutory mortgage made before 1926 and to a statutory legal charge made after 1925) with Form No. II. in the 3rd Sch. The forms are identical save for the description of the mortgage which is to be discharged.

General application of form of receipt.

It is provided by s. 115 (8) that the receipt applies to a mortgage "whether made by way of statutory mortgage or not" before or after 1926.

Rentcharges.

Remedies for the recovery of annual sums charged on land.

121.—(1) Where a person is entitled to receive out of any land, or out of the income of any land, any annual sum, payable half-yearly or otherwise, whether charged on the land or on the income of the land, and whether by way of rentcharge or otherwise, not being rent incident to a reversion, then, subject and without prejudice to all estates, interests, and rights having priority to the annual sum, the person entitled to receive the annual sum shall have such remedies for recovering and compelling payment thereof as are described in this section, as far as those remedies might have been conferred by the instrument under which the annual sum arises, but not further.

This s. reproduces C. A., 1881, s. 44, as amended by the C. A., 1911, s. 6, with the further amendments noted, *inf.*

"Income" includes rents and profits: s. 205 (1) (xix).

When not applicable.

"Not being rent incident to a reversion": thus the s. does not apply to rent reserved by a lease; nor would it apply to an annuity to be provided for out of the proceeds of sale of land held on trust for sale.

Perpetuities.

"As far as those remedies, &c.," though the perpetuity rule does not apply: sub-s. (6); still the grantors must have had a sufficient estate out of which the rentcharge and powers could be created.

Legal rentcharges.

Legal rentcharges are confined to rents in possession being either perpetual or for a term of years absolute: s. 1 (2) (b), *sup.*; this definition is wide enough to include a compensation rentcharge acquired on the extinguishment of manorial incidents. Only owners of legal rentcharges can create legal terms under this s.: see s. 8 (2), *sup.*

Partial release.

As to the effect on the remedies of a release of part of the land affected by a rentcharge: s. 70, *sup.*

Improvement of Land Act, 1899, s. 3.

Any instalment accruing due after 1899 of any rentcharge created under the Improvement of Land Act, 1864, or under any special Improvement Act, is recoverable by the remedies given by this s. *and not otherwise:* Improvement of Land A., 1899, s. 3; see s. 207 (c), *inf.* But a land charge of Class A. or B. for securing money will take effect as a charge by way of legal mortgage: L. C. A., 1925, s. 11.

(2) If at any time the annual sum or any part thereof is unpaid for twenty-one days next after the time appointed for any payment in respect thereof, the person

entitled to receive the annual sum may enter into and distrain on the land charged or any part thereof, and dispose according to law of any distress found, to the intent that thereby or otherwise the annual sum and all arrears thereof, and all costs and expenses occasioned by non-payment thereof, may be fully paid.

Power to distrain in right of a reversionary lease.

Semble, that notwithstanding *Lewis* v. *Baker,* 1905, 1 Ch. 46, as under s. 149, *inf.*, a reversionary term will take effect as a term, without entry, a sub-lessor (entitled to a lease in possession and a reversionary lease) who grants an underlease for a term equal to or longer than that subsisting under the lease in possession, but shorter than the two terms taken together, will have a right to distrain, for the reversionary lease confers a reversion.

Power to enter and distrain.

See also as to powers of distress given as indemnity against rents not being within the Bills of Sale Acts, 1878 and 1882, s. 189 (1), *inf.*; and as to benefit of covenants and powers given for that purpose running with the land to be protected: *ib.* sub-s. (2).

And as to implied powers of distress when land is conveyed subject to or exonerated from a rent: s. 190, *inf.*

(3) If at any time the annual sum or any part thereof is unpaid for forty days next after the time appointed for any payment in respect thereof, then, although no legal demand has been made for payment thereof, the person entitled to receive the annual sum may enter into possession of and hold the land charged or any part thereof, and take the income thereof, until thereby or otherwise the annual sum and all arrears thereof due at the time of his entry, or afterwards becoming due during his continuance in possession, and all costs and expenses occasioned by nonpayment of the annual sum, are fully paid; and such possession when taken shall be without impeachment of waste.

Power to enter and take rents and profits.

"Income" means here rents and profits: s. 205 (1) (xix).

(4) In the like case the person entitled to the annual sum, whether taking possession or not, may also by deed demise the land charged, or any part thereof, to a trustee for a term of years, with or without impeachment of waste, on trust, by all or any of the means hereinafter mentioned, or by any other reasonable means, to raise and pay the annual sum and all arrears thereof due or to become due, and all costs and expenses occasioned by nonpayment of the annual sum, or incurred in compelling or obtaining payment thereof, or otherwise relating thereto, including the costs of the

preparation and execution of the deed of demise, and the costs of the execution of the trusts of that deed:

Provided that this subsection shall not authorise the creation of a legal term of years absolute after the commencement of this Act, save where the annual sum is a rentcharge held for a legal estate.

The surplus, if any, of the money raised, or of the income received, under the trusts of the deed shall be paid to the person for the time being entitled to the land therein comprised in reversion immediately expectant on the term thereby created.

The means by which such annual sum, arrears, costs, and expenses may be raised includes—

(a) the creation of a legal mortgage or a sale (effected by assignment or sub-demise) of the term created in the land charged or any part thereof,

(b) the receipt of the income of the land comprised in the term.

The proviso is new; it gives effect to s. 8 (2), *sup.*

Power to demise term.

Where the rentcharge is not held for a legal estate the term created will, until the estate owner of the land gives legal effect to the transaction, take effect only in equity: s. 8.

How agrees with usual form.

When a term is necessary.

This s. gives the old remedies for enforcing payment of a rentcharge, except that instead of a term, power only is given to limit a term. The remedy by means of a term is rarely wanted, and if wanted the term can be created. Where by reason of a lease being prior in date to the limitation of a rentcharge, or being granted under a power which has priority to a rentcharge, the lessee's title is paramount to the rentcharge, the remedy by distress is not available, for the lessee is only liable to pay his rent to the reversioner. Hence the necessity for a term.

Other remedies.

Where on the creation of a rentcharge a term is limited to trustees for securing it, the owner of the rentcharge must resort to the term, and is not entitled to an order for sale of the inheritance to raise arrears: *Blackburne* v. *Hope-Edwardes,* 1901, 1 Ch. 419; but it is conceived that this rule would not apply where the term was created by the owner of the rentcharge under this s. See also ss. 90 and 91 as to sales by the court. The remedies given by this s. do not prevent recourse to other remedies: *Searle* v. *Cooke,* 1890, 43 Ch. D. 519, 533. Where the land has been sold the court has jurisdiction to order the arrears of a rentcharge to be paid out of the proceeds, notwithstanding that a term has been limited for securing it: *Re Duke of Manchester,* 1910, 1 Ch. 106. As to the power of the court to order the arrears of a rentcharge to be raised by sale or mortgage, see *Re Tucker,* 1893, 2 Ch. 323; *Hambro* v. *H.*, 1894, 2 Ch. 564.

Action of debt against *terre*-tenant.

As to the recovery from the *terre*-tenant (*i.e.* the person entitled to the first estate of freehold in the land charged) of rentcharges and arrears in an action of debt, whether the profits of the land have been received or not, see *Thomas* v. *Sylvester,* 1873, L. R. 8 Q. B. 368; *Pertwee* v. *Townsend,* 1896, 2 Q. B. 129; *Re Herbage Rents, Greenwich,* 1896, 2 Ch. 811; *Cundiff* v. *Fitzsimmons,* 1911, 1 K. B. 513; and see 41 Sol. J. 107; 44 *ib.* 390; also articles by Mr. Cyprian Williams in 13 L. Q. R. 288, and by Mr. F. E. Farrer in 60 L. J. Newsp. 676, 701, 720.

Under para. (a) if the land is sold the term can be assigned or sub-demised; if the land is mortgaged the term will be sub-demised: s. 89, *sup.*; unless a charge is created by way of legal mortgage.

Effected by assignment or sub-demise.

(5) This section applies only if and as far as a contrary intention is not expressed in the instrument under which the annual sum arises, and has effect subject to the terms of that instrument and to the provisions therein contained.

"Is not expressed": it will not be implied.

Contrary intention.

(6) The rule of law relating to perpetuities does not apply to any powers or remedies conferred by this section, nor to the same or like powers or remedies conferred by any instrument for recovering or compelling the payment of any annual sum within the meaning of this section.

This sub-s. replaces C. A., 1911, s. 6 (1). It validates all powers and rights of entry, &c., express or implied within this s., which might otherwise be too remote.

Perpetuities.

(7) The powers and remedies conferred by this section apply where the instrument creating the annual sum comes into operation after the thirty-first day of December, eighteen hundred and eighty-one, and whether the instrument conferring the power under which the annual sum was authorised to be created came into operation before or after that date, unless the instrument creating the power or under which the annual sum is created otherwise directs.

This sub-s. replaces C. A., 1911, s. 6 (2), and removes the doubt as to the meaning of "by the instrument under which the annual sum arises" in sub-s. (1), which must now mean the instrument exercising the power.

Extent of s. Instrument exercising the power.

Whether a settlement giving a power to jointure expressly authorised the powers conferred by this s. to be exercised or not, the jointress will have them (subject to legal confirmation by the estate owner: s. 8, *sup.*) though the settlement may have been made before 1882, provided that the appointment came into operation after 1881.

Jointure created under a power.

122.—(1) A rentcharge or other annual sum (not being rent incident to a reversion) payable half yearly or otherwise may be granted, reserved, charged or created out of or on another rentcharge or annual sum (not being rent incident to a reversion) charged on or payable out of land or on or out of the income of land, in like

Creation of rentcharges charged on another rentcharge and remedies for recovery thereof.

manner as the same could have been made to issue out of land.

Object of s.

This s. removes the difficulties arising where perpetual rentcharges are settled and a rentcharge (*e.g.* a jointure) has been limited thereout. Such limitations are confirmed by sub-s. (4) subject to any order made by the court before 1926.

Before 1926 a rentcharge could not be limited by a subject out of another rentcharge or incorporeal hereditament, for there could be no power to distrain on the original rent: Co. Litt. 47 a; 3 Cruise Dig. 275; *Stafford* v. *Buckley*, 1750, 2 Ves. Sen. 170 (an example of a "personal inheritance"); 24 Hals. L. of E. 468.

Incorporeal hereditaments generally.

As to the application of this Act to incorporeal hereditaments generally: s. 201; the object is to avoid unnecessary technical distinctions between "freehold land" and incorporeal hereditaments. "Land" includes a rent and other incorporeal hereditaments: s. 205 (1) (ix); "hereditament" means any real property which on an intestacy occurring before 1926 might have devolved upon an heir: *ib.*; "rent" includes a "rentcharge": *ib.* (xxiii).

(2) If at any time the annual sum so created or any part thereof is unpaid for twenty-one days next after the time appointed for any payment in respect thereof, the person entitled to receive the annual sum shall (without prejudice to any prior interest or charge) have power to appoint a receiver of the annual sum charged or any part thereof, and the provisions of this Act relating to the appointment, powers, remuneration and duties of a receiver, shall apply in like manner as if such person were a mortgagee entitled to exercise the power of sale conferred by this Act, and the annual sum charged were the mortgaged property and the person entitled thereto were the mortgagor.

Power to appoint a receiver.

As there could be no power to distrain, this power is given in lieu thereof. For the provisions relating to the "appointment" of a receiver: s. 101 (1) (iii), *sup.*; as to his powers, duties and remuneration: s. 109. No power to appoint a receiver arises by reason only of bankruptcy: s. 110. No power is given to sell the rent which is charged. As to the release of part of land (including a rent) affected by a rentcharge: s. 70, *sup.*

(3) The power to appoint a receiver conferred by this section shall (where the annual sum is charged on a rentcharge) take effect in substitution for the remedies conferred, in the case of annual sums charged on land, by the last preceding section, but subsection (6) of that section shall apply and have effect as if herein re-enacted and in terms made applicable to the powers conferred by this section.

Perpetuity.

Thus the perpetuity rule does not apply to the power to appoint a receiver.

(4) This section applies to annual sums expressed to be created before as well as after the commencement of this Act, and, but without prejudice to any order of the court made before the commencement of this Act, operates to confirm any annual sum which would have been validly created if this section had been in force.

Retrospective.

See note to sub-s. (1), *sup.*

Powers of Attorney.

Execution under power of attorney.

123.—(1) The donee of a power of attorney may, if he thinks fit, execute or do any assurance, instrument, or thing in and with his own name and signature, and under his own seal, where sealing is required, by the authority of the donor of the power; and every assurance, instrument, and thing so executed and done shall be as effectual in law, to all intents, as if it had been executed or done by the donee of the power in the name and with the signature and seal of the donor thereof.

This s. replaces C. A., 1881, s. 46.

Where an attorney executes an instrument in his own name it should be expressed that he executes as attorney, or on behalf of his principal.

Execution of deeds.

After 1925 the execution of a deed by an individual requires a signature as well as sealing: s. 73, *sup.*

Execution of instruments by or on behalf of corporations.

As to execution of instruments by or on behalf of corporations: s. 74. Under sub-ss. (3), (4) a person executing a conveyance as attorney of a corporation, after 1925, will sign the corporation's name in the presence of a witness and affix his own seal; a corporation aggregate acting under a power of attorney may execute an instrument by an officer duly appointed for that purpose executing in the name of the donor of the power.

Coys. Act, s. 78.

The provisions of s. 74 apply to transactions "wherever effected": sub-s. (5); while the Coys. (Consol.) A., 1908, s. 78, only authorises a limited company to appoint an attorney to execute a deed outside the United Kingdom.

(2) This section applies to powers of attorney created by instruments executed either before or after the commencement of this Act, and operates without prejudice to any statutory direction that an instrument is to be executed in the name of an estate owner.

Execution in name of estate owner.

This sub-s. qualifies sub-s. (1) and gives effect to the general principles enacted in ss. 7 (4) and 8 (1), *sup.*

Payment by attorney under power without notice of death, &c.

124.—(1) Any person making any payment or doing any act, in good faith, in pursuance of a power of attorney, shall not be liable in respect of the payment or act by reason that before the payment or act the

donor of the power had died or become subject to disability or bankrupt, or had revoked the power, if the fact of death, disability, bankruptcy, or revocation was not at the time of the payment or act known to the person making or doing the same.

Protection of attorneys.

Sub-ss. (1), (3) and (4) of this s. reproduce C. A., 1881, s. 47, with slight amendments. "Subject to disability": these words are rather wider than "lunatic, of unsound mind"; they would include a defective": s. 205 (1) (xiii).

Bankruptcy.

As to the meaning of bankruptcy, see s. 205 (1) (i); in relation to a corporation it means the winding-up thereof. Apart from the statute winding-up proceedings are not a revocation of a power of attorney, without notice of them: *Re Oriental Bank*, 1884, 28 Ch. D. 634, 640.

(2) A statutory declaration by an attorney to the effect that he has not received any notice or information of the revocation of such power of attorney by death or otherwise shall, if made immediately before or within three months after any such payment or act as aforesaid, be taken to be conclusive proof of such non-revocation at the time when such payment or act was made or done.

Where the donee of the power of attorney is a corporation aggregate, the officer appointed to act for the corporation in the execution of the power may make the statutory declaration in like manner as if that officer had been the donee of the power.

Where probate or letters of administration have been granted to any person, as attorney for some other person, this section applies as if the payment made or acts done under the grant had been made or done under a power of attorney.

Statutory declaration by attorney or officer.

This sub-s. is new and affords an important protection. The statutory declaration may be required by the person dealing with the attorney. The second para. relates to s. 74 (4), *sup.*

Probate or administration to attorney.

The third para. relates to the grant of special administration while the personal representative is abroad under Ad. of E. A., 1925, s. 18, now replaced by Jud. A., 1925, s. 164.

(3) This section does not affect any right against the payee of any person interested in any money so paid; and that person shall have the like remedy against the payee as he would have had against the payer if the payment had not been made by him.

Saving.

Thus the person interested has the same right of action against the person who receives the money as the person interested would have had against the attorney, if the latter had not parted with the money.

(4) This section applies to payments and acts made and done before or after the commencement of this Act, and in this section "power of attorney" includes a power of attorney implied by statute.

Statutory powers of attorney.

The definition extending the s. to powers of attorney "implied by statute" is new; as to such powers, see ss. 7 (4), 8 (1), 88 (1), 89 (1); as respects lunatics and defectives: s. 22, *sup.*; S. L. A., 1925, s. 28.

Protection under T. A., 1925, s. 29.

This s. is supplementary to T. A., 1925, s. 29, which applies only to trustees, executors, and administrators: *ib.*, s. 68 (17).

The s., besides protecting the donee of the power (sub-s. (1)) with the aid of a statutory declaration (sub-s. (2)) applies to all dealings by any person without notice that a power of attorney, under which any other party to the transaction was acting, had been revoked.

And as to notice being necessary, apart from statute, in order to terminate an agent's authority—except in cases of bankruptcy or death—see *Re Oriental Bank*, 1884, 28 Ch. D. 634.

As to completing purchase under power of attorney under this s.

Further provision is made for powers of attorney by the next five ss. It is still necessary for a purchaser taking a conveyance under power of attorney not made in accordance with ss. 126 or 127 to ascertain that, at the time of execution of the conveyance, the power had not been revoked by the death of the vendor or otherwise. But this s. enables the attorney to give a valid discharge for the purchase-money, so that, where the contract is binding on the vendor, the purchaser would obtain a good equitable title. The legal estate would remain outstanding if the power had been revoked, but if the vendor were dead a conveyance could be obtained from the personal representatives.

If the statutory declaration is made, there will be no need to retain or deposit the purchase-money pending further enquiries.

Powers of attorney relating to land to be filed.

125.—(1) Where an instrument creating a power of attorney confers a power to dispose of or deal with any interest in or charge upon land, the instrument or a certified copy thereof or of such portions thereof as refer to or are necessary to the interpretation of such power shall be filed at the Central Office pursuant to the statutory enactment in that behalf, unless the instrument only relates to one transaction and is to be handed over on the completion of that transaction:

Provided that, if the instrument relates to land or a charge registered under the Land Registration Act, 1925, the instrument or a certified copy thereof or of such portions thereof as aforesaid shall be filed at the Land Registry, and it shall not be necessary to file it at the Central Office unless it also relates to land or a charge not so registered, in which case the instrument or a certified copy thereof or of such portions thereof as

aforesaid shall be filed at the Central Office and an office copy shall be filed at the Land Registry.

Filing and office copies.

"Pursuant to the statutory enactment in that behalf": Jud. A., 1925, s. 219, replacing C. A., 1881, s. 48. It is the practice of the Central Office only to stamp an office copy at the time of the deposit. Copies afterwards required must be bespoken and made in the Central Office.

Revocation of powers of attorney.

The Central Office allow a deed of revocation of a power of attorney to be deposited and will note against the power of attorney the fact of its revocation.

(2) Notwithstanding any stipulation to the contrary, a purchaser of any interest in or charge upon land (not being land or a charge registered as aforesaid) shall be entitled to have any instrument creating a power of attorney which affects his title, or an office copy thereof or of the material portions thereof delivered to him free of expense.

Inalienable right of a purchaser.

This and the next sub-s. give an inalienable right to a purchaser to have either the power created after 1925 or an office copy. In the case of registered land he will not require it, for the power or a certified copy will be filed at the Land Registry; as soon as the entry of his title is made on the register he will not be concerned to show how the entry came to be made.

(3) This section only applies to instruments executed after the commencement of this Act, and no right to rescind a contract shall arise by reason of the enforcement of the provisions of this section.

Not retrospective.

Compare s. 42 (8), *sup.*, as to the negation of a right to rescind.

Effect of irrevocable power of attorney for value.

126.—(1) If a power of attorney given for valuable consideration is in the instrument creating the power expressed to be irrevocable, then, in favour of a purchaser,—

(i) The power shall not be revoked at any time, either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, disability, or bankruptcy of the donor of the power; and

(ii) Any act done at any time by the donee of the power in pursuance of the power shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, disability, or bankruptcy of the donor of the power, had not been done or happened; and

(iii) Neither the donee of the power nor the purchaser shall at any time be prejudicially affected by notice of anything done by the donor of the power without the concurrence of the donee of the power, or of the death, disability, or bankruptcy of the donor of the power.

(2) This section applies to powers of attorney created by instruments executed after the thirty-first day of December, eighteen hundred and eighty-two.

This s. reproduces C. A., 1882, s. 8, save that the word "disability" is throughout substituted for the words "marriage, lunacy, unsoundness of mind." It would be difficult to see how "marriage" could operate to revoke a power given after 1882, save possibly on the marriage of a woman to a foreigner.

Power available in mortgages by sub-demise where rent is not apportioned.

A power of attorney under this s. as extended by s. 128, *inf.*, will still be useful in mortgages of leaseholds, where under s. 89 (6), *sup.*, the power to convey the leasehold reversion is not available by reason of the rent not having been apportioned. In such cases the charge by way of legal mortgage or the mortgage by sub-demise may give a power of attorney to do anything which could have been done had s. 89 applied.

Powers of attorney given for value to a purchaser and the persons deriving title under him.

This s. relates only to powers of attorney given for value, and enables a power of that kind to take the place of an actual transfer. Under the old practice the attorney had to be a named person and the power lapsed by his death. Now, under s. 128, *inf.*, the power can be conferred on a purchaser and the persons deriving title under him. A person desiring to give a security may, in consideration of the loan, give an irrevocable power to transfer, or convey, or sell, thus enabling the lender to realise his security, if he so requires. When the loan is repaid the power may be cancelled, and a transfer and re-transfer are thus avoided. The person taking the power must use all the same precautions as if he had taken an actual transfer, so as to prevent another transferee taking without notice. In the case of land, for instance, he must obtain the deeds.

"Bankruptcy."

"Bankruptcy" includes liquidation by arrangement and the winding-up of a company: s. 205 (1) (i), *inf.*

Notice of winding-up of company.

Apart from this s. notice of winding-up proceedings is of itself revocation of a power of attorney given by a company—at all events where the winding-up is by the court, or under its supervision, and where it is proposed to make any disposition, under the power, of the company's property: see s. 205 (2) of the Cos. (Consol.) A., 1908, and *Re Oriental Bank*, 1884, 28 Ch. D. 634, 640. The result may be different in a voluntary winding-up: see ss. 184, 186, and 205 (1) of the same Act, and *Hire Purchase Furnishing Co.* v. *Richens*, 1887, 20 Q. B. D. 387.

Trustees, tenants for life, &c.

Trustees personal representatives and tenants for life going abroad are given special power to appoint attorneys by T. A., 1925, s. 25, and that s. gives protection to the persons dealing with the attorney.

Trustees and personal representatives are also able to appoint agents or attorneys for dealing with property abroad: *ib.* s. 23 (2).

Effect of power of attorney irrevocable for a fixed time.

127.—(1) If a power of attorney, whether given for valuable consideration or not, is in the instrument creating the power expressed to be irrevocable for a fixed

time therein specified, not exceeding one year from the date of the instrument, then, in favour of a purchaser,—

(i) The power shall not be revoked for and during that fixed time either by anything done by the donor of the power without the concurrence of the donee of the power, or by the death, disability, or bankruptcy of the donor of the power; and

(ii) Any act done within that fixed time by the donee of the power in pursuance of the power shall be as valid as if anything done by the donor of the power without the concurrence of the donee of the power, or the death, disability, or bankruptcy, of the donor of the power, had not been done or happened; and

(iii) Neither the donee of the power, nor the purchaser, shall at any time be prejudicially affected by notice either during or after that fixed time of anything done by the donor of the power during that fixed time without the concurrence of the donee of the power, or of the death, disability, or bankruptcy of the donor of the power, within that fixed time.

(2) This section applies to powers of attorney created by instruments executed after the thirty-first day of December, eighteen hundred and eighty-two.

This s. reproduces C. A., 1882, s. 9, save that the word "disability" is substituted throughout for "marriage, lunacy, unsoundness of mind": see note to last s.

Power of attorney not given for value.

This s. includes powers of attorney not given for value, as, for instance, where a person going abroad desires to give a power to sell property. The main difficulty before 1883 was that in order to make a complete title it was necessary to ascertain that the power had not been revoked by the death of the principal or otherwise when the transfer under the power was made. In order to avoid this, the only course was to make an actual transfer on trust for sale. If no sale was made a re-transfer became necessary, thus in the case of land putting two deeds on the title. Now the position of the attorney is practically the same as if the property had been transferred to him on trust for sale: *Tingley* v. *Müller*, 1917, 2 Ch. 144, 156, 165.

Alien enemy.

As to the effect of the principal becoming an alien enemy: *S. C.*

Execution by attorney in the name of the principal.

It is usual and proper, unless the principal is dead, that the attorney should sign the principal's name and express the deed to be signed, sealed, and delivered by the attorney, naming him. The principal is named and described amongst the parties as if he himself executed, and no other reference is made to the attorney or the power, except in the signature and attestation clause and sometimes in the testimonium: see 1 Prid., 22nd ed., Div. II., Pt. I., Sec. III.; K. & E., 10th ed., vol. i. pp. 777, 778. In cases within ss. 7 (4) and 8 (1) the instrument should be executed in the name of the estate owner.

See also as to execution by an attorney, *Coombes' Case*, 1613, 5 (Pt. ix.) Co. Rep. 77a; *Frontin* v. *Small*, 1726, 2 Lord Raym. 1418; *Wilks* v. *Back*, 1802, 2 East, 142; also *Lawrie* v. *Lees*, 1879, 14 Ch. D. 249; 7 A. C. 19, where, though the attorneys executed in their own names, the inference was that they did so on behalf of their principal: 7 A. C. 28, per Lord Penzance.

Devolution of power of attorney given to a purchaser.

128.—(1) A power of attorney given for valuable consideration may be given, and shall be deemed to have been always capable of being given, to a purchaser of property or any interest therein, and to the persons deriving title under him thereto, and those persons shall be the duly constituted attorneys for all the purposes of the power, but without prejudice to any right to appoint substitutes given by the power.

Object of s.

This s. is new. Taken with s. 126, *sup.*, it completes the scheme under which an irrevocable power for value may be treated as equivalent to property. It renders unnecessary, in cases where s. 89 does not apply, any further methods for getting in the leasehold reversion, besides the irrevocable power. In aid of S. L. A., 1925, s. 16 (1) (iii), it may be of service in mortgages by remaindermen.

Retrospective, how far.

"Shall be deemed to have been always capable of being given": thus in regard to powers created after 1882 (see next sub-s.) if the power was expressed to be given to the purchaser and the persons deriving title under him, that power will be confirmed.

Application of s.

The s. applies to "property": s. 205 (1) (xx); and not merely to land.

(2) This section applies to powers of attorney created by instruments executed after the thirty-first day of December, eighteen hundred and eighty-two.

Burden.

That is to say, to all powers to which s. 126, *sup.* (formerly C. A., 1882, s. 8), applied. Powers given under C. A., 1881, ss. 8 and 9 (now ss. 126—7) have been treated in practice as binding the assigns of the donor of the power, whether or not they had notice of the creation of the power.

(3) This section shall not authorise the persons deriving title under the donee of the power to execute, on behalf of the registered proprietor, an instrument relating to registered land to which effect is to be given on the register, unless the power is protected by a caution or other entry on the register.

Registered land.

Thus if a registered proprietor (whether of land or a charge) gives a power to the attorney to deal with the registered interest in the name of the registered proprietor for the time being, the power must be either protected by a caution or its existence shown on the register.

Power of attorney granted by married woman.

129.—(1) A married woman, whether an infant or not, has power, as if she were unmarried and of full age, by deed, to appoint an attorney on her behalf for the purpose of executing any deed or doing any other act which she might herself execute or do, and the provisions of this Act relating to instruments creating powers of attorney apply thereto.

(2) This section applies to deeds executed after the thirty-first day of December, eighteen hundred and eighty-one.

This s. replaces C. A., 1881, s. 40.

Infants.

The s. does not authorise an attorney of an infant married woman to do any act which she might have done if of full age. An infant cannot have a legal estate in land: ss. 1 (6), 19, 20; 1st Sch., Pt. II., para. 7 (g); Pt. III.; S. L. A., 1925, ss. 26, 27; 2nd Sch., para. 3.

Married women's power of attorney.

As to a married woman's power of attorney under this s., see *Stewart* v. *Fletcher*, 1888, 38 Ch. D. 627, and see *S. C.* as to form of order for payment of income of funds in court, subject to restraint on anticipation, to the attorney of a married woman; see also Seton, 7th ed. 212. A deed which required acknowledgment was incapable of being executed by attorney, but no deed will have to be acknowledged after 1925: s. 167.

Part IV.

Equitable Interests and things in Action.

Creation of entailed interests in real and personal property.

130.—(1) An interest in tail or in tail male or in tail female or in tail special (in this Act referred to as "an entailed interest") may be created by way of trust in any property, real or personal, but only by the like expressions as those by which before the commencement of this Act a similar estate tail could have been created by deed (not being an executory instrument) in freehold land, and with the like results, including the right to bar the entail either absolutely or so as to create an interest equivalent to a base fee, and accordingly all statutory provisions relating to estates tail in real property shall apply to entailed interests in personal property.

Personal estate so entailed (not being chattels settled as heirlooms) may be invested, applied, and otherwise dealt with as if the same were capital money or securities representing capital money arising under the Settled Land Act, 1925, from land settled on the like trusts.

Property in which an estate tail could be created before 1926.

Before 1926 an entailed interest could, by the act of the parties, be created in freeholds and, but only where so permitted by the custom of the manor, in copyholds. Hence the practice arose of directing personal estate to be laid out in the purchase of freehold land to be settled to uses creating estates tail, which, by the doctrine of conversion, achieved the same result.

Expressions by which an entailed interest may be created "by deed."

Under s. 60 (4), *sup.* (replacing the C. A., 1881, s. 51), in any deed made after 1881 an entailed interest may be limited to the grantee "in tail," or to him and "the heirs of his body," or "in tail male," or to him and "the heirs male of his body," or "in tail female," or to him and "the heirs female of his body." Thus independently of s. 60 it was necessary in a deed (not

being executory) to have words referring both to " inheritance " (*e.g.*, " heirs ") and to " procreation " (*e.g.*, " of the body "): Goodeve, R. P., 5th ed. 81.

Contracts for settlements, &c. and wills.

As to what words were before 1926 construed as creating estates tail in contracts and other executory instruments: Norton, 612, 616—619. And as to what words were in a will sufficient to create estates tail before 1926: Theobald, 7th ed. 409—415. Thus, with other authorities on the same lines, the rule in *Wild's Case,* 6 Rep. 17, that a devise to a person and his " children " where he has no issue at the time of the devise will give him an estate tail, will have no application where the testator dies after 1925.

Wild's Case.

Rule after 1925.

The rule applicable after 1925 to these informal expressions is laid down in sub-s. (2), *inf.*

Equity.

" By way of trust ": thus no " entailed interest " can be a legal estate (see s. 1, *sup.*), but this does not prevent the tenant in tail or owner of the base fee from holding the legal estate in the settled land as a trustee. When his interest is in possession he will be entitled to have a vesting instrument made in his favour: S. L. A., 1925, ss. 4—8, 21, 106 (1) (a).

Right of a tenant in tail in possession to bar the entail.

A tenant in tail in possession may bar the entail and create a fee simple without the consent of any other person by any disposition *inter vivos:* F. & R. A., 1833, s. 15; after 1925 he will be able to dispose of his equitable interest by will under s. 176, *inf.*, as if he had previously barred the entail. This s. applies to an owner of a base fee who can enlarge it without consent.

Power of tenant in tail in possession to dispose by will.

Tenant in tail after possibility extinct, and unbarrable entails.

A tenant in tail after possibility of issue extinct, as well as tenants in tail who have unbarrable entails created by the Crown or by Parliament, cannot bar their entailed interests: F. & R. A., 1833, s. 18 (repealed by mistake but restored).

No enrolment required.

Disentailing assurances made after 1925 will not have to be enrolled at the Central Office: s. 133, *inf.*

Special protectors abolished in regard to settlements made after 1925.

Special protectors (not being tenants for life) have been abolished, for F. & R. A., 1833, s. 32, has been repealed by 7th Sch., *inf.*, as respects settlements made or coming into operation (*i.e.*, in the case of a will) after 1925.

A base fee will automatically become enlarged into the fee simple if the owner thereof becomes absolutely entitled to the remainder or reversion expectant thereon: F. & R. A., 1833, s. 39.

Enlargement of base fee.

The owner of a base fee may enlarge it into a fee simple when he becomes entitled in possession or if he subsequently obtains the consent of the protector of the settlement to the disentail: F. & R. A., 1833, s. 19.

Powers of trustee in bankruptcy to bar an entail.

The trustee in bankruptcy of a tenant in tail may bar the entail: Bkcy. A., 1914, s. 55 (5).

Power for court to authorise the committee or receiver of a lunatic to bar the entail.

The entailed interest of a lunatic or defective cannot be sold under the L. A., 1890, s. 120, but the court may authorise the committee or receiver to bar the entail: *Re E. D. S.*, 1914, 1 Ch. 618; see also s. 171 (2), *inf.*

Infancy of tenant in tail.

An infant cannot bar an entail, but under T. A., 1925, ss. 44 (ii) (a), 53, the court may make a vesting order or appoint a person to do so if it is for the infant's benefit: see also *Re Montagu,* 1896, 1 Ch. 549.

When tenant in tail is a convict.

A convict cannot alienate his property: Forf. A., 1870, s. 8; but he may bar an entail, which is not alienation within that s. His administrator cannot bar the entail, but may alienate the property on his behalf: *Re Gaskell,* 1906, 2 Ch. 1.

Married women.

A woman who was married before 1883 and acquired an estate tail before that date could only bar the entail with the consent of her husband by a deed acknowledged: F. & R. A., 1833, s. 2. After 1925 the deed will not be acknowledged: s. 167, *inf.*

A woman married after 1882, or if married before that date, who acquired property after 1882, may dispose of such property by barring an entail or otherwise, as if she were a *feme sole:* M. W. P. A., 1882, s. 2.

Lunacy of the protector of a settlement.

Where the protector of the settlement is a woman married before 1883.

Where the protector of a settlement is a lunatic, his powers may be exercised by the Judge in Lunacy or by the High Court: F. & R. A., 1833, s. 33.

Where the protector of a settlement is a woman married before 1883, she can exercise her powers as protector if the prior estate is her separate property under the M. W. P. A., 1882: see M. W. P. A., 1907, s. 3; or if the prior estate is limited to her for separate use: F. & R. A., 1833, s. 24; thus it is only when the prior estate does not belong to her as her separate property that her husband must join.

Conversion of fee simple conditional into an entailed interest.

Where land enfranchised by the L. P. A., 1922, in which a fee simple conditional subsisted on 1st January, 1926, for want of a custom to entail, that estate is converted into an entailed interest: *ib.* 12th Sch., para. 8 (ii).

Implied estate tail.

An infant may take an implied entailed interest under Ad. of E. A., 1925, s. 51 (3).

Application of statutory provisions.

As the "statutory provisions relating to estates tail in real property" apply to entailed interests in personal property, it follows that if personal estate is bequeathed for an entailed interest to a person who dies in the testator's lifetime leaving issue who would have been inheritable under the entail, the bequest will not lapse: Wills A., 1837, s. 32.

Lapse of estate tail.

Application as "capital money."

As to heirlooms: S. L. A., 1925, s. 67, which provides that the proceeds shall be applicable as capital money with an extension. References to personal "chattels settled as heirlooms" in any enactment extends to chattels within that s.: see sub-s. (4).

As to the "investment" of capital money: *ib.* s. 73 *et seq.*

(2) Expressions contained in an instrument coming into operation after the commencement of this Act, which, in a will, or executory instrument coming into operation before such commencement, would have created an entailed interest in freehold land, but would not have been effectual for that purpose in a deed not being an executory instrument, shall (save as provided by the next succeeding section) operate in equity, in regard to property real or personal, to create absolute, fee simple or other interests corresponding to those which, if the property affected had been personal estate, would have been created therein by similar expressions before the commencement of this Act.

Construction of informal expressions used after 1925.

Thus the rules for ascertaining the construction of informal limitations coming into operation after 1925, which before 1926 would, in the case of freeholds, have created an entailed interest, will be those which under the general law would have been applied to limitations of personal estate.

Rules applicable to personal estate.

For the rules applicable to personal estate, see 2 Jar., 6th ed. pp. 1915—1917; Tud. L. C., 4th ed. 367, 832.

And as to the construction of an "executory instrument," see Norton, 609—630.

"Save as provided by the next succeeding s."

Under s. 131 (abolishing the rule in *Shelley's Case*), which s. applies to interests in property real or personal under limitations coming into operation after 1925, the words formerly construed as words of limitation will be construed as words of purchase.

"Heirs" to take as purchasers.

But if property is expressed to be given to an "heir" or a particular class of heirs, the same person or persons will take as would in the case of freehold

land affected by the general law before 1926 have answered that description; see also s. 132.

Thus in a gift of personal estate to the heirs of a person after 1925, the person to take will be the person who would before 1926 have answered the description of "heir" if the property had been freehold land unaffected by any special custom. As to heirs taking by purchase: Norton, 317 *et seq.*; 2 Jar. 5th ed. 905 *et seq.*

Assimilation of the law

This s. and ss. 131, 132, are good examples of the assimilation of the law of real and personal property, some features being adopted from each class of property.

(3) Where personal estate (including the proceeds of sale of land directed to be sold and chattels directed to be held as heirlooms) is, after the commencement of this Act, directed to be enjoyed or held with, or upon trusts corresponding to trusts affecting, land in which, either before or after the commencement of this Act an entailed interest has been created, and is subsisting, such direction shall be deemed sufficient to create a corresponding entailed interest in such personal estate.

Settlements by reference.

Thus entailed interests in personal estate, including heirlooms, can be made by reference to settlements created before or after 1926, or by the same instrument.

Practice.

It will be possible after 1926 to settle real and personal estate by the same clause where that is convenient; it will do away with the long trusts formerly used to make leaseholds and heirlooms devolve as nearly as possible with settled freeholds.

Strict settlements by means of a trust for sale.

If preferred, a strict settlement can be made by vesting the land in trustees on trust for sale and by a deed of even date settling the net proceeds of sale on trusts which before 1926 were only applicable to freehold land.

(4) In default of and subject to the execution of a disentailing assurance or the exercise of the testamentary power conferred by this Act, an entailed interest (to the extent of the property affected) shall devolve as an equitable interest, from time to time, upon the persons who would have been successively entitled thereto as the heirs of the body (either generally or of a particular class) of the tenant in tail or other person, or as tenant by the curtesy, if the entailed interest had, before the commencement of this Act, been limited in respect of freehold land governed by the general law in force immediately before such commencement, and such law had remained unaffected.

As to "the testamentary power": s. 176, *inf.*

Devolution of entailed interests in equity.

"To the extent of the property affected": thus, if a term of years is entailed, when the term ceases, the entailed interest must necessarily cease.

Heirs of the body.

"As the heirs of the body . . . of the tenant in tail or other person": an estate tail can be limited not only to the heirs of the body of the tenant in

tail, but also, on failure of such issue, to collateral relatives who are heirs male of the body of some "other person": *Re MountGarret*, 1919, 2 Ch. 294.

Tenant by the curtesy, under a fee tail.

"As tenant by the curtesy." If a married woman tenant in tail solely entitled in possession dies leaving her husband, by whom she has had issue, born alive, who are or would if living be capable of inheriting the estate tail by descent, he will be entitled to curtesy: Co. Litt. 29 a, b; 182 a; Litt. ss. 35, 52; he can take though the estate is only equitable, but not, it seems, if during the whole coverture a stranger has dispossessed the wife: *Parker* v. *Carter*, 1845, 4 Ha. 400, 413.

"In respect of freehold land." Special customs.

On a devolution after 1925 no question can arise respecting any special customs of descent; it will be governed by the "general law in force" before 1926. See also Ad. of E. A., 1925, s. 45 (abolishing descent to heir, &c.), but this does not affect the descent of an entailed interest: *ib.* sub-s. (2). See also s. 51 (2) relating to descent on the death of a lunatic living and of full age on 1st January, 1926.

(5) Where personal chattels are settled without reference to settled land on trusts creating entailed interests therein, the trustees, with the consent of the usufructuary for the time being if of full age, may sell the chattels or any of them, and the net proceeds of any such sale shall be held in trust for and shall go to the same persons successively, in the same manner and for the same interests, as the chattels sold would have been held and gone if they had not been sold, and the income of investments representing such proceeds of sale shall be applied accordingly.

Power to sell entailed chattels.

This sub-s. supplements S. L. A., 1925, *s.* 67, which enables heirlooms settled with land to be sold with the leave of the court. This sub-s. does not apply where s. 67 is applicable: see the words "without reference to settled land."

Entailed leaseholds.

If leaseholds are held for an entailed interest, this creates a "settlement": S. L. A., 1925, s. 1 (1) (ii), and title must be made under s. 20 (1) (i) or s. 23 (1) (2) of that Act.

Entailed "personal inheritance."

A "personal inheritance," as in *Stafford* v. *Buckley*, 1750, 2 Ves. Sen. 170, can now be entailed under sub-s. (1) and can be dealt with as capital money: *ib.*, without the aid of this sub-s. (5). A personal inheritance not entailed is covered by Ad. of E. A., 1925, s. 45 (1).

(6) An entailed interest shall only be capable of being created by a settlement of real or personal property or the proceeds of sale thereof (including the will of a person dying after the commencement of this Act), or by an agreement for a settlement in which the trusts to affect the property are sufficiently declared.

Creation of entailed interests by settlements.

Authorised methods of settling land.

As to the meaning of "settlement" in relation to land, see s. 205 (1) (xxvi), *inf.*; S. L. A., 1925, ss. 1, 117 (1) (xxiv). For the authorised methods of settling land *inter vivos*: S. L. A., 1925, s. 4; for the procedure in the case of settlements by will: *ib.* s. 6. A settlement of an "entailed interest," when

it takes effect free from prior equitable interests, is a "trust instrument": *ib.* s. 9 (1) (iv) (b).

Proceeds of sale.

As to proceeds of sale, see note to sub-s. (3), *sup.*

Agreement for a settlement.

As to giving effect to and protecting contracts for a settlement: S. L. A., 1925, s. 11.

Executory instruments; what will create entailed interests.

"In which the trusts . . . are sufficiently declared": see sub-ss. (1) and (2), *sup.*, and notes thereto. In the case of an executory instrument made after 1925 the intention to create an entailed interest must be clearly indicated. This is necessary in consequence of the power to create entailed interests in personal estate.

(7) In this Act where the context so admits "entailed interest" includes an estate tail (now made to take effect as an equitable interest) created before the commencement of this Act.

Definition of "entailed interest."

It is important to note that this expression includes estates tail created before 1926.

Conversion of legal estates tail, created before 1926, into equitable interests.

A legal estate tail created before 1926 is converted into a corresponding equitable interest without prejudice to its priority: 1st Sch., Pt. I., *inf.*

Legal estate vested in tenant for life or in tail entitled before 1926.

The tenant for life (including a tenant in tail), though owning only an equitable interest, will, after 1925, acquire the legal estate in the settled land: 1st Sch., Pt. II., para. 5, *inf.*; but he will not be able to deal with it under the S. L. A., 1925, till a vesting instrument is executed: *ib.* s. 13.

Abolition of the rule in Shelley's Case.

131. Where by any instrument coming into operation after the commencement of this Act an interest in any property is expressed to be given to the heir or heirs or issue or any particular heir or any class of the heirs or issue of any person in words which, but for this section would, under the rule of law known as the Rule in Shelley's case, have operated to give to that person an interest in fee simple or an entailed interest, such words shall operate in equity as words of purchase and not of limitation, and shall be construed and have effect accordingly, and in the case of an interest in any property expressed to be given to an heir or heirs or any particular heir or class of heirs, the same person or persons shall take as would in the case of freehold land have answered that description under the general law in force before the commencement of this Act.

The rule in *Shelley's Case*, how far still applicable.

The rule in *Shelley's Case*, 1 Rep. 101, was to the following effect:—"Where an estate of freehold is limited to a person, with a further limitation in the same instrument, either mediate or immediate, to his heirs, the word 'heirs' is regarded as a word of limitation, and such person takes a fee simple, or if the limitation is to heirs of his body, an estate tail."

This rule still applies where the instrument was made, or in the case of a will the testator died, before 1926.

S. relates to "property," generally.

The s. relates to property, not merely to land, by reason of the assimilation effected by s. 130, *sup.* In consequence of such assimilation the old rule, which, though it defeated the intention of the parties, worked well for some purposes, could not be allowed to stand.

Perpetuties. Wills should be inspected.

In particular, as the "heir" or "heir of the body" will take as purchaser, care must be taken in the preparation of documents after 1925 to see that the limitation is not too remote. This warning applies to the wills of living persons.

Heirs of body.

As to "heirs of the body," see s. 130 (4), *sup.*

As to heirs taking by purchase.

132.—(1) A limitation of real or personal property in favour of the heir, either general or special, of a deceased person which, if limited in respect of freehold land before the commencement of this Act, would have conferred on the heir an estate in the land by purchase, shall operate to confer a corresponding equitable interest in the property on the person who would, if the general law in force immediately before such commencement had remained unaffected, have answered the description of the heir, either general or special, of the deceased in respect of his freehold land, either at the death of the deceased or at the time named in the limitation, as the case may require.

Inheritance Act, 1833.

The Inheritance A., 1833 (as amended), has not been repealed, but is still applicable for the purposes of this s. and ss. 130, 131. See L. P. (Amend.) A., 1924, 9th Sch., para. 1.

Object of s.

The object of the s. is to enable property, whether real or personal, to be given in equity to a person who under the old law, independently of any special custom of descent, would have been the "heir" of the deceased person named in respect of the freehold land of the deceased unaffected by special custom.

Hence it is immaterial (sub-s. (2)) whether this deceased ancestor died before or after 1926.

Extent of s.

The new law, however, only applies to limitations or trusts created by an instrument made after 1925, or by a will of a person who dies after 1925: sub-s. (2).

"Heir" taking personal property.

It follows that after 1925 personal property can be given to an "heir" without any trust to convert the property into land. This will facilitate the framing of trusts of a fund consisting partly of real and personal estate.

"Either general or special."

"The heir either general or special": thus the gift may be to the "heir begotten of a named marriage." See also ss. 130, 131, *sup.*

Descent.

Though by the Ad. of E. A., 1925, s. 45 (1), devolution by descent to the "heir" is abolished on a death after 1925, nothing in that Act affects the right of any person to take beneficially, by purchase, as heir either general or special: *ib.* s. 51 (1).

As to heirs taking by purchase: 2 Jar., 5th ed. 905 *et seq.*; Theobald, 7th ed. 329 *et seq.*

Time for ascertainment of heir.

The heir can be ascertained "at the death of the deceased" person named as the ancestor, or "at the time named in the limitation," *e.g.*, "to the person who shall answer the description of the right heir of A. at the time of the failure of the foregoing limitations."

(2) This section applies whether the deceased person dies before or after the commencement of this Act,

but only applies to limitations or trusts created by an instrument coming into operation after such commencement.

Extent of s. Equitable interests.

See note to sub-s. (1). The s. only relates to equitable interests. All estates in remainder are converted into equitable interests: 1st Sch., Pt. I.; and cannot, after 1925, be created as legal estates: s. 1. All limitations to an heir by purchase will be contained in settlements, including wills. Whether the interest so acquired will be clothed with a legal estate will depend on whether or not the owner has an interest in possession which gives him either an absolute interest, or one which confers on him the powers of a tenant for life. In either of these cases he can call either for an assent in writing (Ad. of E. A., 1925, s. 36), or for a vesting instrument to be made in his favour: S. L. A., 1925, ss. 4—8.

Abolition of enrolment of disentailing assurances, &c. 3 & 4 Will. 4, c. 74.

133.—(1) Every assurance or instrument executed or made after the commencement of this Act which, under the provisions of sections forty-one, forty-six, fifty-eight, fifty-nine, seventy-one, and seventy-two of the Fines and Recoveries Act, 1833, or otherwise under that Act (as amended by this Act), would have been required to be enrolled in the Central Office in England, shall be as effectual for all purposes, without such enrolment, as if it had been duly enrolled within the time prescribed by the said Act for such enrolment.

Provisions as to enrolment.

By the F. & R. A., 1833, s. 41, all assurances effected under that Act, except leases for twenty-one years or less, commencing within twelve months from the date of the lease and at a rent not less than five-sixths part of a rack rent, had to be enrolled in the Central Office; though under s. 54 an assurance of copyhold land enrolled on the court rolls had not to be enrolled also in the Central Office.

Under s. 46, where the consent of the protector was given by a separate deed to that by which the disentailing assurance was effected, the separate deed also had to be enrolled.

S. 58 relates to consents by a protector to a disentailing assurance by a trustee in bankruptcy.

S. 59 relates to enactments where the trustee in bankruptcy was disentailing.

S. 71 applies the previous ss. of the Act to disentailing assurances of capital money, &c.

Irish land, and capital money.

S. 72 applies the provisions of s. 71, for the benefit of creditors of a tenant in tail as respects lands in Ireland; but under that s. disentailing assurances of land must be enrolled in Ireland (this will still be so, for this Act does not extend to Ireland), but in regard to capital money in England and not in Ireland; such enrolment in England will be unnecessary after 1925.

"Or otherwise."

The words "or otherwise" cover the remaining cases where the assurance or deed of consent would otherwise have had to be enrolled in England.

Disentailing assurances no longer title deeds.

Disentailing assurances executed after 1925 will not be title deeds relating to the legal estate; they will be behind the curtain, hence it became unnecessary to enrol them. Legal effect will be given thereto by assents and vesting instruments when the interest falls into possession.

Copyholds. As there will be no copyholds after 1925 the s. refers only to enrolment in the Central Office.

Repeals. For repeals of parts of the F. & R. A., 1833, see L. P. (Amend.) A., 1924, 10th Sch.; also 7th Sch., *inf.*

(2) In this section "assurance" includes a vesting order operating as a disentailing assurance, whether made for barring an estate tail or enlarging a base fee or otherwise.

Vesting order to disentail. As to vesting orders for disentailing an infant's entailed interest: *Re Montagu,* 1896, 1 Ch. 549; see also T. A., 1925, ss. 44 (ii) (a), 53.

As to disentailing a lunatic's property for the purpose of re-settling: s. 171 (2), *inf.*

(3) This section applies to entailed interests authorised to be created by this Act as well as to estates tail created before the commencement of this Act.

Retrospective. Enrolment is abolished as respects disentailing assurances in England and Wales made after 1925, whether the entailed interest was created before or after 1926.

Restriction on executory limitations.

134.—(1) Where there is a person entitled to—

(a) an equitable interest in land for an estate in fee simple or for any less interest not being an entailed interest, or

(b) any interest in other property, not being an entailed interest,

with an executory limitation over on default or failure of all or any of his issue, whether within or at any specified period or time or not, that executory limitation shall be or become void and incapable of taking effect, if and as soon as there is living any issue who has attained the age of twenty-one years of the class on default or failure whereof the limitation over was to take effect.

(2) This section applies where the executory limitation is contained in an instrument coming into operation after the thirty-first day of December, eighteen hundred and eighty-two, save that, as regards instruments coming into operation before the commencement of this Act, it only applies to limitations of land for an estate in fee, or for a term of years absolute or determinable on life, or for a term of life.

Extension of principle to property generally. This s. reproduces C. A., 1882, s. 10, which related only to land: see the last three lines of sub-s. (2); but extends the principle to property generally with a view to further assimilation.

Equitable interests.

The s. only relates to equitable interests in land; the estate owner will give effect to the equitable title: S. L. A., 1925, ss. 16, 20 (1) (ii).

Where the instrument containing the executory limitation comes into operation before 1926, this s. only applies to an estate in fee or for life, or a term of years absolute or determinable with life: sub-s. (2).

Executory limitations assimilated to entailed interests.

Under the law in force before the S. L. A., 1882, came into operation, an executory limitation generally prevented alienation for a longer period than an ordinary strict settlement. Thus under a devise "to A. in fee simple, and if he die without issue living at his death to B. in fee simple," with further limitations over of the same kind, it was formerly necessary that all the persons named should concur in a sale, whereas in case of an ordinary strict settlement on the several persons named and their issue, A. with his son, when of age, could bar the entail and sell. After 1925 title cannot be made by a tenant for life and remainderman, but only by the estate owner. This s. enables A. alone to call on the S. L. A. trustees to execute a deed of discharge under S. L. A., 1925, s. 17, when (assuming that there are no subsisting family charges) any child or other issue of his attains twenty-one, the limitations over becoming barred in the same event in which the entail under a strict settlement could be barred. The s. gives no interest to the issue, but simply places A. in his lifetime, when a child or other issue of his attains twenty-one, in the same position as independently of the Act he would have been at his death if a child or other issue of his were then living. See also s. 163, *inf.*

This s. applies in the case of a gift over on death without children, if these words are construed to mean "without leaving children": *Re Booth,* 1900, 1 Ch. 768.

It applies to an executory limitation in defeasance of an equitable fee simple: *Re Shrubb,* 1910, W. N. 143.

Equitable waste.

135. An equitable interest for life without impeachment of waste does not confer upon the tenant for life any right to commit waste of the description known as equitable waste, unless an intention to confer such right expressly appears by the instrument creating such equitable interest.

This s. replaces Jud. A., 1873, s. 25 (3). After 1925 there will be no legal life estates, though the tenant for life of full age will nearly always have the legal estate in the settled land vested in him as trustee.

Equitable waste.

A tenant for life without impeachment for waste cannot pull down or deface the family mansion: *Vane* v. *Barnard,* 1717, 2 Vern. 738; or cut ornamental timber: *Weld-Blundell* v. *Wolseley,* 1903, 2 Ch. 664. As to the right to cut timber on a "timber estate": *Dashwood* v. *Magniac,* 1891, 3 Ch. 306. As to an injunction against committing waste: *Meux* v. *Cobley,* 1892, 2 Ch. 253

Legal assignments of things in action.

136.—(1) Any absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt or other legal thing in action, of which express notice in writing has been given to the debtor, trustee or other person from whom the assignor would have been entitled to claim such debt or thing in action, is effectual in law (subject to equities

having priority over the right of the assignee) to pass and transfer from the date of such notice—

(a) the legal right to such debt or thing in action;

(b) all legal and other remedies for the same; and

(c) the power to give a good discharge for the same without the concurrence of the assignor:

Provided that, if the debtor, trustee or other person liable in respect of such debt or thing in action has notice—

(a) that the assignment is disputed by the assignor or any person claiming under him; or

(b) of any other opposing or conflicting claims to such debt or thing in action;

he may, if he thinks fit, either call upon the persons making claim thereto to interplead concerning the same, or pay the debt or other thing in action into court under the provisions of the Trustee Act, 1925.

This s. replaces the Jud. A., 1873, s. 25 (6).

Operation of the s.

The law as regards notice under this s. has no connexion with the rule in *Dearle* v. *Hall*, 3 Rus. 1, as to which see next s.

The operation of this s. is not confined to "legal things in action" properly so called, but includes any right which, before 1875, was not assignable under general law because of being a thing in action, but was assignable in equity: *Torkington* v. *Magee*, 1902, 2 K. B. at 430; see also *Re Pain*, 1919, 1 Ch. 38. The object was to provide for the concurrent administration of law and equity so that the rules of equity would prevail.

The s. does not apply to an assignment of shares which are only transferable in the books of a company or in a special manner provided by the articles of association: Coys. (Consol.) A., 1908, s. 22; and *Torkington* v. *Magee*, *sup.*; nor to an assignment of the right to sue for damages in respect of a breach of contract already committed: *May* v. *Lane*, 1894, 64 L. J. Q. B. 236; *Torkington* v. *Magee*, *sup.*, at 434.

"Absolute assignment... (not purporting to be by way of charge only)."

An assignment must in form be absolute, but an implied or equitable right to redemption does not take it out of the s.; thus a mortgage of a thing in action made in the common form will be an absolute assignment: *Tancred* v. *Delagoa Bay Ry. Co.*, 1889, 23 Q. B. D. 239; *Hughes* v. *Pump House Hotel Co.*, 1902, 2 K. B. at 196; see also *Horwood* v. *Millar*, 1916, 2 K. B. 44; aff. 61 Sol. J. 114; *Re Williams*, 1917, 1 Ch. 1. A conditional assignment is not within the s.: *Durham Bros.* v. *Robertson*, 1898, 1 Q. B. at 773.

Form of assignment.

Save that it must in form be absolute, any effective form or mode of assignment will be sufficient: *Harding* v. *H.*, 1886, 17 Q. B. D. 442; unless special rules as to the form or mode of assignment have been prescribed by statute, as in the case of assignments of mortgages or bonds of a company under the C. C. C. A., 1845, s. 46; a voluntary assignment is within the s.: *Re Westerton*, 1919, 2 Ch. 104.

"By writing."

This does not exclude assignments by deed; thus where a debt due to a firm was assigned by one partner in writing and, subsequently, by another partner by deed, the second assignment, though invalid as an assignment by deed, was good as an assignment in writing: *Marchant* v. *Morton*, 1901, 2 K. B. at 832.

"Under the hand of the assignor."

It is conceived that the signature of an agent is not sufficient: see *Wilson* v. *Wallani*, 1880, 5 Ex. D. 163, 164 (a decision on the meaning of similar words in the B. A., 1869, s. 23); but by the Partnership A., 1890, s. 6, the signature of one of a number of partners may be sufficient to bind the firm: *Re Briggs*, 1906, 2 K. B. 209.

"Debt," assignment of part.

The assignment of part of a debt is not within this s., but will transfer in equity the part assigned: *Re Steel Wing*, 1921, 1 Ch. 349. To be within this s. the debt assigned must be a definite sum: *Jones* v. *Humphreys*, 1902, 1 K. B. 10.

Notice, effect of.

Notice of an assignment under this s. is requisite to the acquisition of a legal title to the property assigned; in this it differs from the notice required under the rule in *Dearle* v. *Hall*, which confers no title, but regulates the priority of competing titles: *Ward* v. *Duncombe*, 1893, A. C. at 392.

Priority of competing assignments is governed by the dates of service of the notices: *Marchant* v. *Morton*, 1901, 2 K. B. at 831.

Notice must be served in writing whether the debtor can read or not: *Hockley* v. *Goldstein*, 1920, 25 Com. Cas. 284; as to the sufficiency of an informal notice by letter, see *Denney* v. *Conklin*, 1913, 3 K. B. 177. It must be given to the fund holder.

Effect of assignment.

(1) The assignee becomes entitled to the legal right in the thing in action, with power to give a valid discharge.

(2) The assignor loses his right to the thing in action, and cannot sue for it: *Read* v. *Brown*, 1888, 22 Q. B. D. at 132.

(3) The assignee can bring an action to recover the thing in action in his own name: *Re Westerton*, 1919, 2 Ch. at 111; but only in cases where before 1875 he could have sued in the name of the assignor: *Marchant* v. *Morton*, 1901, 2 K. B. at 832; and may enforce his right by garnishee proceedings or by writ of *fi. fa.*, *elegit*, or otherwise.

The general effect of the s. is to render assignable in law rights which before 1875 were assignable in equity only, but no new rights have been created: *Tolhurst* v. *Associated Cement Manufacturers*, 1903, A. C. at 424; except that an assignment under this s. need not be supported by any consideration: *Re Westerton, sup.*; thus contracts are only assignable under this s. which are assignable in equity; nor is the efficacy of an equitable assignment impaired: *Brandt's* v. *Dunlop*, 1905, A. C. at 461.

Assignment subject to "prior equities."

It was not intended to confer rights other than such as would have been conferred by an equitable assignment, hence legal assignments are made subject to equities existing at the date of notice of assignment, of which the assignee has actual or constructive notice: *Torkington* v. *Magee, sup.*; *Bateman* v. *Hunt*, 1904, 2 K. B. at 538; *Re Pain*, 1919, 1 Ch. 38.

See further on this s., 4 Hals. L. of E. 367 and supplement.

Payment into court.

As to payment into court, see T. A., 1925, s. 63.

30 & 31 Vict. c. 144.

(2) This section does not affect the provisions of the Policies of Assurance Act, 1867.

Policies of Assurance Act, 1867.

The Policies of Assurance Act, 1867, enables assignees of life policies to sue in their own name and makes it essential to give notice of assignments of policies to the society.

Dealings with life interests, reversions and other equitable interests.

137.—(1) The law applicable to dealings with equitable things in action which regulates the priority of competing interests therein, shall, as respects dealings with equitable interests in land, capital money, and securities representing capital money effected after the

commencement of this Act, apply to and regulate the priority of competing interests therein.

This subsection applies whether or not the money or securities are in court.

"The law applicable to dealings with equitable things in action."

The law regulating the priority of assignments of equitable things in action is known as the rule in *Dearle* v. *Hall*, 1823, 3 Rus. 1.

Receipt of notice the material date.

This rule makes applicable to equitable interests the bankruptcy rule as to things in action established by *Ryall* v. *Rowles*, 1 Ves. Sen. 348. The rule is that the priority, of competing interests in equitable assignments of things in action, depends on the date upon which notice of the assignment to the trustees, or other persons who for the time being are owners of the legal interest in the property assigned, is received, and not on the date of the assignment.

Principle of the rule.

This rule is based on the principle that the assignment is not completed, against third parties, until the assignee has done all in his power to reduce into possession the property assigned, and to prevent the assignor committing a fraud on a subsequent assignee.

Administration according to priority of notice.

The notice has no bearing on the validity of the assignment, but it imposes on the trustees, or other owners of the legal interest, a duty to see that the equitable interests of the assignees of which they have notice are administered according to priority of notice: *Ward* v. *Duncombe*, 1893, A. C. at 392. The doctrine in *Dearle* v. *Hall* will not be extended by the court: *Hill* v. *Peters*, 1918, 2 Ch. at 279.

Original extent of the rule.

This rule did not apply to equitable interests in land, but did apply to the proceeds of sale of land held on trust for sale: *Ward* v. *Duncombe*, 1893, A. C. at 390. It did not apply to an annuity charged on leaseholds: *Wiltshire* v. *Rabbits*, 1844, 14 Sim. 76; nor to bills of sale: *Ex p. Allen*, 1870, L. R. 11 Eq. 209.

Extension of application.

Under this s. the rule applies to equitable interests in land, capital money, and securities representing capital money as respects dealings after 1925.

"Capital money."

As to the meaning of "capital money": s. 205 (1) (xxvi), *inf.*

As to the application of the rule to capital money before 1926, see *Re Sandes*, 1920, 1 Ir. R. 216, 342, disapproving *Re Carew*, 1868, 16 W. R. 1077.

Fund in court.

Stop orders.

As to the special rules respecting notice where the fund is in court, see next sub-s. Where notice has already been given to the trustees and the fund has subsequently been paid into court, a "stop order" need not be obtained. Stop orders will, subject to that exception, still be required, for the rule does not apply to funds in court. As regards such funds, all that the sub-s. does is to apply the law relating to things in action to capital money (liable to be laid out in land) when paid into court.

Affidavit of no incumbrances on payment out.

This s. does not alter the decision in *Edwards* v. *Grove*, 1906, W. N. 191, that an application for payment of money out of court must, in the case of capital money, be supported by an affidavit of no incumbrances, for the number of charges on capital money (*e.g.*, jointures and portions) has not been reduced: *Williams* v. *Ware*, 1888, 57 L. J. Ch. 497. An affidavit was not required where the money in court was not "capital money": *S. C.*; but seeing that after 1925 a "strict settlement" can be made of personal estate without a trust to invest in the purchase of land, the court may, after 1925, require an affidavit in all cases.

(2) (i) In the case of a dealing with an equitable interest in settled land, capital money or securities representing capital money, the persons to be served with notice of the dealing shall be the trustees of the settle-

ment; and where the equitable interest is created by a derivative or subsidiary settlement, the persons to be served with notice shall be the trustees of that settlement.

(ii) In the case of a dealing with an equitable interest in the proceeds of sale of land or in the rents and profits until sale the persons to be served with notice shall, as heretofore, be the trustees for sale.

(iii) In any other case the person to be served with notice of a dealing with an equitable interest in land shall be the estate owner of the land affected.

The persons on whom notice is served pursuant to this subsection shall be affected thereby in the same manner as if they had been trustees of personal property out of which the equitable interest was created or arose.

This subsection does not apply where the money or securities are in court.

Notice to "the trustees of the settlement."

Under para. (i) the notice (see s. 196, *inf.*) must be given to the "trustees of the settlement," *i.e.*, the S. L. A. trustees: s. 205 (1) (xxvi); S. L. A., 1925, s. 30; or to the trustees of a derivative or subsidiary settlement, as the case may require. Save during a minority (*ib.* s. 26), or when there is no tenant for life of full age (*ib.* s. 23), the settled land will be vested in the tenant for life as estate owner and trustee; hence but for this para. the notice would have been given to the estate owner. No doubt in practice notice will also be given to him but will not operate under this s.

Paras. (ii) and (iii) are merely declaratory.

On whom notice should be served.

Unless a trust corporation is acting, there will usually be at least two trustees of a "settlement" or of a disposition on trust for sale. Where there is more than one trustee, notice should be given to them all.

Notice to one of two or more trustees.

Still there is nothing in this s. to alter the rule that notice to one trustee is good, though there may be other trustees, for the purpose of acquiring priority, so long as that trustee acts, or the other trustees get notice before he ceases to act: *Smith* v. *S.*, 1833, 2 Cr. & M. 231; *Timson* v. *Ramsbottom,* 1836, 2 Keen, 35; *Ward* v. *Duncombe,* 1893, A. C. 369. Under sub-s. (8), *inf.*, the other trustees ought to have delivery of the notice. An enquiry from all the trustees would disclose the assignment though notice had only been given to one of them.

Effect of notice to all the trustees.

Notice to all the trustees remains good though new trustees have been appointed who have no notice: *Re Wasdale,* 1899, 1 Ch. 163; but in this case they are not liable if they pay the money to the wrong person: *Hallows* v. *Lloyd,* 1888, 39 Ch. D. 686.

Derivative settlements.

Where an interest under a derivative settlement is assigned notice of the assignment should be given to the trustees of that settlement, there being no privity between the trustees of the principal settlement and the assignee: *Stephens* v. *Green,* 1895, 2 Ch. 148.

Compound settlement.

If the interest arises under a compound settlement the notice should be given to the trustees of that settlement; and see S. L. A., 1925, s. 1 (1) proviso.

Life interest restored.

If a life interest has been restored or continued, and the assignment affects that interest, the notice should be given to the trustees of the settlement which created the life interest; and see S. L. A., 1925, s. 22.

Where a trust corporation is acting as custodian trustee.

If a custodian trustee is appointed under P. T. A., 1906, s. 4, in respect of the property affected, the notice should be given to the custodian trustee.

Notice to personal representatives who have parted with the property.

Where the property dealt with is vested in personal representatives, notice should be given to them; the notice would not protect the dealing if it is given after the representatives have parted with the property by an assent or otherwise, even though the dealing may have been completed before.

Notice to trustees or personal representatives before appointment or before representation is granted.

Notice of an assignment is ineffectual if given to a trustee before appointment, or to a trustee who disclaims, or to an executor who renounces probate: *Re Dallas,* 1904, 2 Ch. 385; notice cannot be given to an administrator before the grant is made: *Re Kinahan,* 1907, 1 Ir. R. 321; see also *Addison* v. *Cox,* 1872, 8 Ch. at 79; *Johnstone* v. *Cox,* 1881, 19 Ch. D. at 20.

Endorsement on the trust instrument.

These difficulties can be got over if a notice is endorsed on the trust instrument, if any, under sub-s. (4), *inf.*

"Estate owner."

"Estate owner" in para. (iii) only refers to the legal owner of the land: s. 205 (1) (v).

Assignor the sole trustee.

Para. (iii) does not make valid a notice to a sole trustee who is also the assignor, in this case the notice should be endorsed, but the assignor, if one of two or more trustees, is bound by the notice.

Effect of the service of notice.

After notice the trustees must protect the interest of the assignee who, thereafter, so far as his interest extends, takes the place of the assignor. The trustees are liable if they pay the income of the property assigned in contravention of the assignment.

Production of account; furnishing information.

They must produce the trust accounts on demand to the assignee or his solicitor at his own cost, and answer his questions concerning the interest assigned; but they are not bound to answer the requisition of any person except the beneficiary or his assignee, or the solicitor of either of them; they need not answer the questions of an intending purchaser, or in any way assist the beneficiary to encumber or anticipate his interest: *Low* v. *Bouverie,* 1891, 3 Ch. 82.

Duties of a new trustee.

A new trustee, when appointed, should ascertain what notices have been received: *Phipps* v. *Lovegrove,* 1873, 16 Eq. at 90.

Constructive notice, restriction on.

A trustee is not affected with notice of any matter in connexion with any particular trust or estate which he has obtained merely by having acted in another trust or for another estate: T. A., 1925, s. 28.

Infants.

Where before 1926 an infant has been appointed sole trustee of land the legal estate vests in the Public Trustee pending the appointment of a new trustee; where he is a trustee jointly with persons of full age it vests in them: 1st Sch., Pt. III., *inf.*

After 1925 an infant cannot be appointed to be a trustee of any property: s. 20, *sup.;* see also s. 19 (4)—(6); nor can he be appointed an executor: Jud. A., 1925, s. 165, replacing Ad. of E. A., 1925, s. 20.

Fund in court.

As to the law regulating competing interests in equitable things in action where the fund, an interest wherein is assigned, is in court: Withers, 119 *et seq.*

This sub-s. does not alter the existing law on this subject.

Stop orders. required.

A "stop order," in any case, will effectively prevent a subsequent assignee acquiring an interest in the fund without notice of the order; even under the rule in *Dearle* v. *Hall* a subsequent assignee, who had notice of a prior assignment at the time of his own assignment, could not, by prior notice, obtain priority: *Re Holmes,* 1885, 29 Ch. D. 786; *Mutual Life, &c.* v. *Langley,* 1886, 32 Ch. D. 460.

Separate account.

As to the effect of carrying over a fund in court to a separate account: *Cloutte* v. *Storey,* 1911, 1 Ch. 18.

Notice to trustees useless.

Where a fund is already in court assignments of interests in that fund will not be protected by notice to the trustees of the fund: *Pinnock* v. *Bailey,* 1883, 23 Ch. D. 497.

Part not in court.

Where part only of the fund assigned is in court, notice must be given to the trustees as respects the part which is not in court.

If a trust corporation has been appointed under the next s. the notice must be served on that corporation instead of on the trustees, for notice served on the trustees will not affect priorities until it is forwarded to and received by the trust corporation: s. 138 (4).

Substitutional notice to a trust corporation.

It follows that an intending purchaser will inspect the trust instrument and its endorsements to ascertain whether or not a trust corporation has been appointed to receive notices. As to registered land, see L. R. R., 1925, r. 229.

Inspection to ascertain whether a trust corporation has been appointed.

(3) A notice, otherwise than in writing, given to, or received by, a trustee after the commencement of this Act as respects any dealing with an equitable interest in real or personal property, shall not affect the priority of competing claims of purchasers in that equitable interest.

Before 1926 it was not necessary for the notice to be in writing: *Lloyd* v. *Banks*, 1868, 3 Ch. App. 491; *Ipswich, &c. Club* v. *Arthy*, 1920, 2 Ch. 257. This sub-s. applies to dealings with property generally, whether originally within *Dearle* v. *Hall*, or brought within it by this s.

"Writing" made essential in all cases.

This sub-s. does not mean that it will be sufficient to give notice to one only of two or more trustees, but that whenever notice is given, whether to a sole trustee, or to each of a number of trustees, or to trustees collectively, it must be given in writing.

"A trustee."

The obligation to give notice in writing, only relates to the priority of the competing interests of assignees. The trustees will remain liable if they pay the income of the property assigned to the assignor after they have received a verbal notice.

Effect of notice not in writing on the liability of the trustees.

Where they have received a notice, otherwise than in writing, of an assignment they must, before distribution, request the beneficiary to give them particulars of the assignment.

Formerly, where the assignee was one of the trustees of the fund affected, he was presumed to have notice of the assignment: *Browne* v. *Savage*, 1859, 4 Drew. 635; *Lloyds Bank* v. *Pearson*, 1901, 1 Ch. 865; though this notice was not effectual as respects his co-trustees.

Assignee being one of the trustees.

After 1925 the assignee should serve a notice addressed to the trustees generally, including himself; it will be safer to serve duplicates on each of the trustees: s. 196, *inf.*; each trustee, or the solicitor to the trustees, should keep a copy of the notice. Where the trustees are represented by solicitors they will accept service on behalf of all the trustees.

Service of notices.

A receipt for the notice should be obtained wherever practicable.

(4) Where, as respects any dealing with an equitable interest in real or personal property—

(a) the trustees are not persons to whom a valid notice of the dealing can be given; or

(b) there are no trustees to whom a notice can be given; or

(c) for any other reason a valid notice cannot be served, or cannot be served without unreasonable cost or delay,

a purchaser may at his own cost require that—

(i) a memorandum of the dealing be endorsed,

written on or permanently annexed to the instrument creating the trust;

(ii) the instrument be produced to him by the person having the possession or custody thereof to prove that a sufficient memorandum has been placed thereon or annexed thereto.

Such memorandum shall, as respects priorities, operate in like manner as if notice in writing of the dealing had been given to trustees duly qualified to receive the notice at the time when the memorandum is placed on or annexed to the instrument creating the trust.

Endorsements. Persons to whom valid notice cannot be given.

A sole trustee who is also the assignor is not a person to whom a valid notice can be given: *Re Dallas*, 1904, 2 Ch. 385.

Extent of sub-s.

This sub-s. applies to all trusts as in the case of sub-s. (3), *sup.*, and gives an alternative mode of serving notice where there are no trustees, or where through absence from the country of the trustees, &c. notice cannot be given in the usual way, the trustees not being represented by solicitors.

Liabilities of estate owner.

The sub-s. applies to all statutory, express or implied trusts.

It is conceived that s. 3 (1) (c), *sup.*, does not for general purposes create a trust, but only a statutory liability, confined to giving effect to equitable interests of which the estate owner has notice.

Memorandum, contents of.

The memorandum should contain all the information which before 1926 had to be given in notices to trustees under the rule in *Dearle* v. *Hall*. It should, for instance, give the date and parties to the assignment and sufficient indication of the property affected, the nature of the transaction, and the date of endorsement.

Date of endorsement.

To secure priority an assignee will stipulate that the endorsement be made and dated immediately on completion. Indeed, where any doubt is entertained whether a valid notice can be served, the assignee will insist on an endorsement.

(5) Where the property affected is settled land, the memorandum shall be placed on or annexed to the trust instrument and not the vesting instrument.

Where the property affected is land held on trust for sale the memorandum shall be placed on or annexed to the instrument whereby the equitable interest is created.

Endorsements in the case of "settled land."

The sub-s. frees the documents of title relating to the legal estate from liability to be endorsed.

For the meanings of "vesting instrument" and "trust instrument," see S. L. A., 1925, ss. 4—6, 10.

In the case of land held on trust for sale.

Where the land is held on trust for sale the endorsement will be placed on the instrument declaring the trusts of the proceeds of sale.

Curtain provisions.

This sub-s. follows the principles adopted in T. A., 1925, s. 35, of keeping the instruments relating to the legal estate in land distinct from those creating equitable interests.

(6) Where the trust is created by statute or by operation of law, or in any other case where there is no

instrument whereby the trusts are declared, the instrument under which the equitable interest is acquired or which is evidence of the devolution thereof shall, for the purposes of this section, be deemed the instrument creating the trust.

In particular, where the trust arises by reason of an intestacy, the letters of administration or probate in force when the dealing was effected shall be deemed such instrument.

What instruments are deemed to create a trust.

"Is created by statute": *e.g.*, the trust for sale arising where a legal estate is on 1st January, 1926, vested in an infant jointly with a person of full age, or where land is acquired for the purposes of a personalty settlement, or where undivided shares were subsisting on 1st January, 1926, or an intestacy occurs after 1925; or the entailed interest which is substituted for a fee simple conditional under L. P. A., 1922, 12th Sch., para. (8) (ii).

"By operation of law": *e.g.*, resulting or implied trusts, see s. 53 (2), *sup.*

Probate or letters of administration.

The probate (in case of a partial intestacy) or letters of administration are merely examples of instruments which are "evidence of the devolution" of the equitable interest, though a legal estate may have thereby passed to the personal representatives.

Object of sub-s.

The object of the sub-s. is to enlarge the class of instruments, on which endorsements may be made with a view to giving notice of the dealing when the property falls to be distributed.

(7) Nothing in this section affects any priority acquired before the commencement of this Act.

Saving.

This is in accordance with the general principle that beneficial interests should be maintained.

(8) Where a notice in writing of a dealing with an equitable interest in real or personal property has been served on a trustee under this section, the trustees from time to time of the property affected shall be entitled to the custody of the notice, and the notice shall be delivered to them by any person who for the time being may have the custody thereof; and subject to the payment of costs, any person interested in the equitable interest may require production of the notice.

Right to possession of the notice and right to production thereof.

The right to require production of notices enlarges the amount of information which a trustee is bound to furnish: see *Low* v. *Bouverie*, 1891, 3 Ch. 82 at p. 99.

It is conceived that an intending assignee will, after 1925, require answers to the following questions, which the trustees should have no difficulty in giving:—

Requisitions to be made.

(1) Have the trustees received any, and what, written notices of dealings?

(2) Are there any, and what, endorsements of notice of dealings on the trust instruments?

(3) Has a trust corporation been nominated to receive notices under s. 138, *inf.*?

If the answer to the last question is in the affirmative it will be necessary to search the register of notices kept by the trust corporation: see s. 138 (7).

(9) The liability of the estate owner of the legal estate affected to produce documents and furnish information to persons entitled to equitable interests therein shall correspond to the liability of a trustee for sale to produce documents and furnish information to persons entitled to equitable interests in the proceeds of sale of the land.

Liability to furnish information.

As to the former liability of trustees to furnish information, see *Davis* v. *Dysart,* 1855, 20 Beav. 405; *Pennell* v. *Dysart,* 1859, 27 Beav. 542; *Chichester* v. *Marquis of Donegal,* 1869, 4 Ch. App. 416; and as to copies of deeds: *Banbury* v. *Briscoe,* 1680, 2 Ch. Cas. 42.

Trustees were not bound to answer enquiries of or produce documents to intending assignees unless authorised to act for the beneficiaries: *Low* v. *Bouverie,* 1891, 3 Ch. 82.

Effect of sub-s. as respects settled land.

Under this sub-s. the tenant for life of settled land, being the estate owner and trustee of that land, will be bound to furnish information, &c. in like manner as trustees for sale before 1926. S. L. A. trustees are not liable for documents of title relating to the settled land, other than securities for capital money, being placed in the possession of the tenant for life: S. L. A., 1925, s. 98 (3).

(10) This section does not apply until a trust has been created, and in this section "dealing" includes a disposition by operation of law.

Disposition by operation of law.

"By operation of law": *e.g.*, the equitable interest of a remainderman may have become vested in his trustee in bankruptcy.

Power to nominate a trust corporation to receive notices.

138.—(1) By any settlement or other instrument creating a trust, a trust corporation may be nominated to whom notices of dealings affecting real or personal property may be given, whether or not under the foregoing section, and in default of such nomination the trustees (if any) of the instrument, or the court on the application of any person interested, may make the nomination.

After 1925 a settlor or testator may nominate a trust corporation for the purposes of the s., and, whether the trust instrument came into force before or after 1926, the trustees or the court may make the nomination.

What notices to be given.

"Whether or not under the foregoing s.," those notices which would be given under the law in force before 1926, as well as those under s. 137, must be given to the trust corporation.

Registered land.

In the case of registered land, the registrar takes the place of a trust corporation under this s.: see L. R. A., 1925, s. 102; L. R. R., 1925, r. 229; and will act without any express nomination, and notwithstanding that a trust corporation may have been nominated to receive notices of dealings affecting other property.

In consequence of this s., intending purchasers, mortgagees, &c., of equitable interests, will, where the trust instrument comes into operation after 1925, peruse it to see whether a trust corporation has been nominated therein, and whenever the trust was created, will inspect the trust instrument to see if an endorsement giving notice of an appointment has been made: see next sub-s. Investigation by intending purchaser, &c.

The object of the s. is to relieve the trustees from onerous duties, and to supply an efficient registrar. Only in cases where the dealings are numerous or complicated will advantage be taken of the power conferred. Object of s.

(2) The person having the possession or custody of any instrument on which notices under that section may be endorsed shall cause the name of the trust corporation to whom notices may be given to be endorsed upon that instrument.

"Under that s.," *i.e.*, under s. 137, for sub-ss. (4) to (6) thereof, showing the instrument on which notices may be endorsed, are of general application, and are not confined to notices newly authorised to be given under sub-s. (1) of s. 137. Endorsements of notice of nomination.

This sub-s. primarily relates to nominations made by the trustees or by the court under sub-s. (1), *sup.*; but even where the nomination is made by the trust instrument itself, it is expedient and obligatory to call attention to it by an endorsed note: see sub-s. (3), *inf.*

(3) Notice given to any trust corporation whose name is so endorsed shall operate in the same way as a notice or endorsement under the foregoing section.

See s. 137 (1), (4), and notes thereto. "Whose name is so endorsed," see note to last sub-s. Effect of notice.

(4) Where a trust corporation is acting for the purposes of this section a notice given to a trustee of the trust instrument of a dealing relating to the trust property shall forthwith be delivered or sent by post by the trustee to the trust corporation, and until received by the corporation shall not affect any priority.

Thus notice to the trustees becomes ineffective until it is forwarded to and received by the trust corporation. Forwarding of notices by the trustees.

Similarly, in the case of registered land, if a notice is given to the trustees they must forward it to the registrar, who stands in the place of a trust corporation. Registered land.

(5) A trust corporation shall not be nominated for the purposes of this section—

(a) unless that corporation consents to act; or

(b) where that corporation has any beneficial interest in or charge upon the trust property; or

(c) where a trust corporation is acting as the trustee or one of the trustees of the instrument creating the trust.

Disability of certain trust corporations.

The object of this sub-s. is to secure that a nominated trust corporation shall be an independent body. In view of the range of activities of the Public Trustee, it may be practically impossible for him to act for the purposes of this s.

Trust corporation acting as trustee.

If the trust corporation is already a trustee of the instrument, drawing remuneration for its services, it ought to keep a proper register of notices without being expressly appointed for the purposes of this s.

Where a trust corporation is already acting as trustee, an additional corporation ought not to be required for the purposes of this s.

(6) Where a trust corporation acting for the purposes of this section becomes entitled to any beneficial interest in or charge upon the trust property, another trust corporation shall be nominated in its place and all documents relating to notices affecting the trust shall be delivered to the corporation so nominated.

Trust corporation subsequently becoming unable to act.

This is to secure that the nominated trust corporation shall remain an independent body.

(7) A trust corporation acting for the purposes of this section shall be bound to keep a separate register of notices of dealings in respect of each equitable interest and shall enter therein—

(a) the date of the notice;

(b) the name of the person giving the notice;

(c) short particulars of the equitable interest intended to be affected; and

(d) short particulars of the effect of the dealing if mentioned in the notice.

Register of notices.

"The date of the notice," *i.e.*, not the date of instrument containing the notice but the date on which the notice is received: see note to last s.

(8) The trust corporation may, before making any entry in the register, require the applicant to pay a fee not exceeding the prescribed fee.

Payment of fees.

As to the prescribed fees, see sub-s. (11), *inf.*

(9) Subject to the payment of a fee not exceeding the prescribed fee, the trust corporation shall permit any person who would, if the corporation had been the trustee of the trust instrument, have been entitled to inspect notices served on the trustee, to inspect and take

copies of the register and any notices held by the corporation.

Right to inspect notices, &c.

S. 137 (8) gives a right to any person interested in the equitable interest to require production of the notice, while sub-s. (9) gives right to production of documents and the furnishing of information: see notes thereto.

(10) Subject to the payment by the applicant of a fee not exceeding the prescribed fee, the trust corporation shall reply to all inquiries respecting notices received by the corporation in like manner and in the same circumstances as if the corporation had been the trustee of the trust instrument.

Furnishing of information.

See s. 137 (9) and note thereto.

(11) In this section "prescribed fee" means the fee prescribed by the Treasury, with the sanction of the Lord Chancellor, in cases where the Public Trustee acts as a trust corporation for the purposes of this section.

Prescribed fees.

The Fee Order relating to the new fees to be charged by the Public Trustee will be published shortly before 1st January, 1926.

Part V.

Leases and Tenancies.

Effect of extinguishment of reversion.

139.—(1) Where a reversion expectant on a lease of land is surrendered or merged, the estate or interest which as against the lessee for the time being confers the next vested right to the land, shall be deemed the reversion for the purpose of preserving the same incidents and obligations as would have affected the original reversion had there been no surrender or merger thereof.

R. P. A., 1845, s. 9; definitions.

This s. reproduces R. P. A., 1845, s. 9.

"Land": see s. 205 (1) (ix), *inf.*; "lease" includes an underlease or other tenancy: s. 154.

Effect as respects the underlessee.

The object of this s. is, as respects "incidents," to keep alive the covenants and conditions formerly binding on an underlessee where the original leasehold reversion has been extinguished; in other words, the new reversioner is able to sue, notwithstanding the surrender or merger. For this purpose "affected" means "benefited."

Effect as respects the reversioner.

On the other hand, the preservation of the "obligation," which would have "affected" the reversion, refers to the covenants and conditions binding on the former sub-lessor; these can be enforced by the underlessee against the new reversioner so far as they relate to the land, independently of any personal obligation enforceable against the sub-lessor: *Piggott* v. *Stratton*, 1859, 1 De G. F. & J. 33.

Disclaimer by trustee in bankruptcy.

Disclaimer by a trustee in bankruptcy was a surrender within the Bkcy. A., 1869: *Smalley* v. *Hardinge,* 1880, 7 Q. B. D. 524; see also *Re Roberts,* 1878, 10 Ch. D. at 110; but under the Bkcy. A., 1914, s. 54 (6), the underlessee can be excluded, unless he accepts an order vesting the bankrupt's lease in him: see *Re Baker,* 1901, 2 K. B. 628.

(2) This section applies to surrenders or mergers effected after the first day of October, eighteen hundred and forty-five.

Retrospective.

The s. applies whenever the lease was granted, but only as respects surrenders or mergers effected after 1st October, 1845.

If property is rebuilt so as not to give the respective underlessees the tenements they originally held, the sub-lessor (having surrendered and accepted a new lease: see s. 150, *inf.*) cannot recover rent from the underlessees: *Upton* v. *Townend,* 1855, 17 C. B. 30.

Surrenders before 1845.

If before 1845 the head lessee surrendered, the underlessee could not be sued on his covenants: *Burton* v. *Barclay,* 1831, 7 Bing. 746, 756. But an underlessee could hold under his sub-lease: *Walter* v. *Yalden,* 1902, 2 K. B. 304, 310 (a case of a trespasser); and the underlessee might retain his remedies against the underlessor personally: *Piggott* v. *Stratton, sup.*

Merger before 1845.

If the head lessee, before 1845, took a conveyance of the fee simple, he could no longer sue the underlessee on his covenants: *Webb* v. *Russell,* 1789, 3 T. R. 393.

But merger now depends on intention: s. 185, *inf.; Cap. & Co.'s Bk.* v. *Rhodes,* 1903, 1 Ch. 631, 647.

Apportionment of conditions on severance.

140.—(1) Notwithstanding the severance by conveyance, surrender, or otherwise of the reversionary estate in any land comprised in a lease, and notwithstanding the avoidance or cesser in any other manner of the term granted by a lease as to part only of the land comprised therein, every condition or right of re-entry, and every other condition contained in the lease, shall be apportioned, and shall remain annexed to the severed parts of the reversionary estate as severed, and shall be in force with respect to the term whereon each severed part is reversionary, or the term in the part of the land as to which the term has not been surrendered, or has not been avoided or has not otherwise ceased, in like manner as if the land comprised in each severed part, or the land as to which the term remains subsisting, as the case may be, had alone originally been comprised in the lease.

This s. replaces L. P. A., 1859, s. 3, and C. A., 1881, s. 12.

Law apart from this s.

At common law on an assignment of the reversion of part of the demised premises, conditions were held to be entire, and incapable of apportionment where the severance took place by the voluntary act of the parties: Co. Litt. 215a, res. 5; *Twynam* v. *Pickard,* 1818, 2 B. & Ald. 105; *secus* where the severance arose otherwise than from the voluntary act of the parties: *Winter's Case,* 1572, 3 Dyer, 308b; *Piggott* v. *Middlesex C. C.,* 1909, 1 Ch. 134.

L. P. A., 1859, s. 3.

Lord St. Leonards' A., s. 3 (replaced by this s.), provided in favour of an

assignee (but not of the lessor), for the apportionment of conditions of re-entry for non-payment of rent or other reservation where the reversion upon a lease was severed, and the rent or other reservation was legally apportioned. S. 141 and this s. of the present Act provide for the apportionment of every condition in a lease, which is in its nature apportionable, and include the case of the avoidance or cesser in any manner of the term granted by the lease as to part only of the land comprised therein.

Application of this s.

Apportionment of conditions.

(2) In this section "right of re-entry" includes a right to determine the lease by notice to quit or otherwise; but where the notice is served by a person entitled to a severed part of the reversion so that it extends to part only of the land demised, the lessee may within one month determine the lease in regard to the rest of the land by giving to the owner of the reversionary estate therein a counter notice expiring at the same time as the original notice.

This sub-s. is new.

Before 1926 the assignee of the reversion of part of a demised premises could not give notice to determine the tenancy as to his part only, where the tenant had not recognised the division of the tenancy: *Re Bebington,* 1921, 1 Ch. 559.

Notice to quit part of a tenancy.

After 1925, where the owner of the original reversion could, under the terms of the lease, give a notice to quit, the assignee of a part acquires a similar right as respects that part, whether the tenant has recognised the severance or not. But the tenant may, within one month, by giving a counter-notice, elect to determine the whole tenancy.

Right to give counter-notice.

In the absence of a special stipulation in the lease a lessor cannot determine part of a tenancy without determining the whole of it; but by the Agr. Hold. A., 1923, s. 27, a landlord of an agricultural holding, held on a tenancy from year to year, may resume possession of part of the holding for any purpose mentioned in that s., notwithstanding the absence of any express stipulation to that effect in the tenancy agreement, and the tenant may, within twenty-eight days, elect to treat such notice as a notice to quit the whole tenancy by serving a counter-notice to that effect on the landlord.

Right to resume possession of part of an agricultural holding.

(3) This section applies to leases made before or after the commencement of this Act and whether the severance of the reversionary estate or the partial avoidance or cesser of the term was effected before or after such commencement:

Provided that, where the lease was made before the first day of January eighteen hundred and eighty-two nothing in this section shall affect the operation of a severance of the reversionary estate or partial avoidance or cesser of the term which was effected before the commencement of this Act.

The s. goes beyond C. A., 1881, s. 12, in applying to leases whenever made: see also s. 154 as to meaning of "lease"; but it does not affect the

Retrospective.

operation of a severance or cesser before 1926, where the lease was made before 1882, for s. 12 only applied to leases made after 1881.

Rent and benefit of lessee's covenants to run with the reversion.

141.—(1) Rent reserved by a lease, and the benefit of every covenant or provision therein contained, having reference to the subject-matter thereof, and on the lessee's part to be observed or performed, and every condition of re-entry and other condition therein contained, shall be annexed and incident to and shall go with the reversionary estate in the land, or in any part thereof, immediately expectant on the term granted by the lease, notwithstanding severance of that reversionary estate, and without prejudice to any liability affecting a covenantor or his estate.

This s. reproduces C. A., 1881, s. 10, and C. A., 1911, s. 2, with an amendment in sub-s. (4), which gives effect to 32 Hen. 8, c. 34, so far as that Act related to the benefit of lessee's covenants, &c. For the meaning of "lease," see s. 154, *inf.*

The words "and without prejudice to any liability affecting a covenantor or his estate" are taken from that Act, and give effect to the old law.

Operation of s.

This s. provides for three distinct matters—

(1) It first annexes rent, and the benefit of covenants by the lessee, and conditions, to the reversion, notwithstanding the severance of that reversion.

(2) It then makes the rent recoverable, and the covenants by the lessee, and conditions, enforceable by "the person from time to time entitled, subject to the term, to the income of the whole or any part" of the demised land: sub-s. (2); *Turner* v. *Walsh*, 1909, 2 K. B. 484, 493-4; and see "income": s. 205 (1) (xix).

(3) To meet *Cohen* v. *Tannar*, 1900, 2 Q. B. 609, sub-s. (3) provides that the rents and covenants may be recovered and enforced where the reversioner becomes entitled "after the condition of re-entry or forfeiture has become enforceable," provided that the condition has not been waived or released.

Effect of this s. on the title of a mortgagee to the rent of mortgaged property.

This s. deals with procedure, and does not affect the rule in *Moss* v. *Gallimore*, 1779, 1 Doug. 279; *Rogers* v. *Humphreys*, 1835, 4 Ad. & E. 299, that a mortgagor in possession is a tenant at the will of his mortgagee, that the latter is, in right of his mortgage term, the reversioner (or if he is a legal chargee, is in a similar position under s. 87), and is entitled on taking possession to receive all arrears of rent, whether the lease was granted before or after the date of the mortgage: *Re Ind Coope*, 1911, 2 Ch. at 231 and 232.

Rent.

Rent, if properly reserved, or if reserved generally, follows the reversion at common law: see *Greenaway* v. *Hart*, 1854, 14 Com. B. 340; *Yellowly* v. *Gower*, 1855, 11 Exch. 274, for some of the difficulties which this s. removes. As to the definition of "rent": s. 205 (1) (xxiii).

Agreement for a lease.

Formerly the s. applied only to a written agreement for a lease of which specific performance could be obtained: *Rickett* v. *Green*, 1910, 1 K. B. 253; and see *Manchester Brewing Co.* v. *Coombs*, 1901, 2 Ch. 608. But under s. 154 it will apply to a parol lease if it is valid and can be enforced: see s. 54 (2).

Parol agreement.

Formerly it did not apply to an agreement not in writing: *Blane* v. *Francis*, 1917, 1 K. B. 252; but where there was an agreement in writing that on the expiration of a lease the lessee should continue in occupation, the terms

of the expired lease (which were to be applied in the new tenancy) are contained in the written agreement within the meaning of this s.: *Cole* v. *Kelly*, 1920, 3 K. B. 106.

Lease of easement.

And as to the case of the grant of a mere easement for a term, see *Martyn* v. *Williams*, 1857, 1 H. & N. 817; *Hooper* v. *Clark*, 1867, L. R. 2 Q. B. 200; *Lord Hastings* v. *N. E. Ry. Co.*, 1899, 1 Ch. 656; 1900, A. C. 260.

Covenants.

The benefit of the lessee's inherent covenants, and the burden of the lessor's inherent covenants were annexed to the reversion by 32 Hen. 8, c. 34, ss. 1 and 2 (repealed by 7th Sch. and replaced by this s. and s. 142), but this Act only applied to express covenants, for the benefit and burden of implied covenants always followed the reversion at common law: *Wedd* v. *Porter*, 1916, 2 K. B. at 101. For the extent to which this s. and s. 142, *inf.*, extend the principle of that Act, see note to s. 142.

Conditions.

The benefit of conditions was also annexed to the reversion by 32 Hen. 8, c. 34, s. 1.

Covenants and conditions of which the benefit runs with the reversion.

As to the class of covenants by the lessee and conditions (*Horsey Estate* v. *Steiger*, 1899, 2 Q. B. 79; *Stevens* v. *Copp*, 1868, L. R. 4 Exch. 20) the benefit of which will run with the reversion under this s., see *Spencer's Case*, and notes, 1 Smith, L. C., 11th ed., 55 *et seq.*

Where, before 1926, a mortgagor, who had no power to bind the mortgagee, granted a lease, no legal term was created, and there being consequently no reversion, this and ss. 140 and 142 would not apply..

Leases by a mortgagor.

But after 1925 the mortgagor will have a legal estate vested in him; hence the lease will create a legal term liable to be set aside by any incumbrancer not bound thereby.

"Having reference, &c."

By covenants "having reference to the subject matter thereof" are meant covenants which "touch or concern" the land demised as distinguished from collateral covenants: *Barnes* v. *City of London, &c. Co.*, 1918, 2 Ch. 18, at p. 33.

"Notwithstanding severance."

As to apportionment of rent and covenants on severance of the reversionary estate, by assignment or surrender, see *Twynam* v. *Pickard*, 1818, 2 B. & Ald. 105; *Mayor of Swansea* v. *Thomas*, 1882, 10 Q. B. D. 48; *Baynton* v. *Morgan*, 1888, 21 Q. B. D. 101; 22 *ib.*, 74. These cases led to the conclusion that where the reversion is severed and the rent is properly apportioned the lessee is legally bound by such apportionment though he has not assented. See further as to the apportionment of rent, Foa, L. & T., 4th ed., 125 *et seq.*, and *Salts* v. *Battersby*, 1910, 2 K. B. 155; *Mitchell* v. *Mosley* 1914, 1 Ch. 438.

Apportionment of conditions.

As to apportionment of conditions, see note to s. 140, *sup.*

Arrears of rent.

The purchaser of a reversion cannot sue a lessee for arrears of rent due before the conveyance: *Flight* v. *Bentley*, 1835, 7 Sim. 149; the right to rent accrued is a thing in action, severed from the reversion, and must be expressly assigned; but the condition of re-entry may be enforced in respect of arrears arising partly before and after the conveyance: *Rickett* v. *Green*, 1910, 1 K. B. 253; and see sub-s. (3), *inf.* *Cp.* Ad. of E. A., 1925, s. 26.

Breaches of repairing covenants.

The right to sue for breaches of repairing covenants may be assigned with the reversion. Such an assignment does not infringe the rule against maintenance and champerty: *Ellis* v. *Torrington*, 1920, 1 K. B. 399.

(2) Any such rent, covenant or provision shall be capable of being recovered, received, enforced, and taken advantage of, by the person from time to time entitled, subject to the term, to the income of the whole or any part, as the case may require, of the land leased.

As to this sub-s., see note to sub-s. (1), *sup.*, on operation of s.

"Person from time to time entitled, &c."

The latter part of this s. gives to the "person entitled to the income," that is, the beneficial owner, as well as the legal reversioner, the right to recover, receive, enforce and take advantage of rent, lessee's covenants and conditions. A mortgagor in possession whose mortgagee has not given notice of his intention to take possession is a person so entitled: *Turner* v. *Walsh*, 1909, 2 K. B. 484 (in *Molyneux* v. *Richard*, 1906, 1 Ch. 34, 43, this s. was not cited); but the s. does not affect the right of a mortgagee on taking possession to all arrears of rent in respect of leases which are valid as against him: *Re Ind Coope*, 1911, 2 Ch. 223, 231.

Registered land.

The proprietor of a registered charge has all the powers conferred by law on the owner of a legal mortgage: L. R. A., 1925, s. 34 (1); the charge either takes effect as a charge by way of legal mortgage (s. 87 (1), *sup.*, gives express powers to take proceedings) or a mortgage term will be vested in the chargee: *ib.*, s. 27.

Tenants in common.

Formerly one tenant in common of the reversion had a right to sue alone: *Roberts* v. *Holland*, 1893, 1 Q. B. 665; but after 1925 there will be no tenants in common of land; the persons to sue will be the trustees for sale.

(3) Where that person becomes entitled by conveyance or otherwise, then such rent, covenant or provision may be recovered, received, enforced or taken advantage of by him notwithstanding that he becomes so entitled after the condition of re-entry or forfeiture has become enforceable, but this subsection does not render enforceable any condition of re-entry or other condition waived or released before such person becomes entitled as aforesaid.

Rights of purchaser of reversion.

These rights were conferred on a purchaser by C. A., 1911, s. 2.

Implied waiver.

From *Davenport* v. *Smith*, 1921, 2 Ch. 270, following *Hunt* v. *Remnant*, 9 Ex. 635, and *Matthews* v. *Smallwood*, 1910, 1 Ch. 777 (see also *Martyn* v. *Williams*, 1857, 1 H. & N. 817), it appears that where to the knowledge of the vendor and purchaser a condition has become enforceable before the reversion is acquired, a conveyance "subject to the lease" operates as a waiver so as to confirm the lease.

Waiver not implied where no notice of the breach.

But in *Atkin* v. *Rose*, 1923, 1 Ch. 523, the court, after indicating that *Davenport* v. *Smith* might have been decided differently, held that if the breach of covenant was not known to the vendor or purchaser at the date of the conveyance there was no implied waiver.

Practice to convey subject to lease "so far only as subsisting."

It is conceived that *Davenport* v. *Smith* would not have been followed, but, in view of s. 65 (2) (effect of reservation), it will be necessary, after 1925, to convey subject to the lease "so far only as subsisting."

(4) This section applies to leases made before or after the commencement of this Act, but does not affect the operation of—

(a) any severance of the reversionary estate; or

(b) any acquisition by conveyance or otherwise of the right to receive or enforce any rent covenant or provision;

effected before the commencement of this Act.

Retrospective.

This s. applies to leases (see s. 154, *inf.*) whenever made; hence it reproduces 32 Hen. 8, c. 34, s. 1, with the additions made in 1881 and 1911.

But where the reversion has been severed, the effect of the severance will differ according to whether it occurred before 1882 or after 1881. Similarly, the effect of the acquisition of a reversion will differ according to whether the conveyance was dated before 1912 or after 1911. Severance and acquisition of reversion.

142.—(1) The obligation under a condition or of a covenant entered into by a lessor with reference to the subject-matter of the lease shall, if and as far as the lessor has power to bind the reversionary estate immediately expectant on the term granted by the lease, be annexed and incident to and shall go with that reversionary estate, or the several parts thereof, notwithstanding severance of that reversionary estate, and may be taken advantage of and enforced by the person in whom the term is from time to time vested by conveyance, devolution in law, or otherwise; and, if and as far as the lessor has power to bind the person from time to time entitled to that reversionary estate, the obligation aforesaid may be taken advantage of and enforced against any person so entitled. Obligation of lessor's covenants to run with reversion.

This s. reproduces 32 Hen. 8, c. 34, s. 2, and C. A., 1881, s. 11; the word " condition " is taken from the Act of 1540.

This s. does not alter the old law as to the class of covenants the burden of which run with the reversion: *Davis* v. *Town Properties, &c.,* 1903, 1 Ch. 797; *Barnes* v. *City of London, &c. Co.,* 1918, 2 Ch. 18, at p. 33. As to what covenants so run, see *Spencer's Case,* and notes, 1 Smith, L. C., 11th ed., 55 *et seq.; Dewar* v. *Goodman,* 1907, 1 K. B. 612; 1908, 1 K. B. 94; 1909, A. C. 72; *Ricketts* v. *Enfield, &c.,* 1909, 1 Ch. 544; and see also notes to ss. 78—80, *sup.* Covenants of which the burden runs with the reversion.

A lessor who has assigned his reversion remains liable upon his express covenants, running with the reversion: *Stuart* v. *Joy,* 1904, 1 K. B. 362; compare and contrast *Eccles* v. *Mills,* 1898, A. C. 360; *Bath* v. *Bowles,* 1906, 93 L. T. 801; *Williams* v. *Gabriel,* 1906, 1 K. B. 155; *Re Hughes,* 1913, 2 Ch. 491. Lessor's liability after assignment.

As to a covenant for renewal, see *Muller* v. *Trafford,* 1901, 1 Ch. 54, and Irish cases there cited; also L. P. A., 1922, 15th Sch., para. 7; and s. 149 (3), *inf.* As to an option to purchase the fee, see *Woodall* v. *Clifton,* 1905, 2 Ch. 257; *Re Leeds and Batley Breweries,* 1920, 2 Ch. at 553. Renewals and option.

This s. necessarily does not apply to cases where the covenants are not severable in their nature, or are not attributable to particular parts of the demised property.

Ss. 139 and 141, *sup.*, effect a considerable extension of the principle of 32 Hen. 8, c. 34, whereby the benefit of the lessee's express covenants and the burden of the lessor's express covenants were annexed to the reversion: see *Lord Hastings* v. *N. E. Ry. Co.,* 1898, 2 Ch. 674; 1899, 1 Ch. 656; 1900, A. C. 260; the burden and benefit of implied covenants were annexed to the reversion at common law: *Wedd* v. *Porter,* 1916, 2 K. B. at 101. In order to be within that Act, a covenant by the lessee had to be entered into with the owner of the legal reversion, so that in a lease under a power reserved to a mortgagor by the mortgage deed, a covenant by the lessee with the mortgagor did not run, but was a covenant in gross, the mortgagor not being the legal Principle of 32 Hen. 8, c. 34 (repealed), extended.

Covenants with persons not parties.

reversioner: *Moss* v. *Gallimore*, 1779, 1 Doug. 279; *Rogers* v. *Humphreys*, 4 Ad. & E. 299. But s. 56, *sup.* (replacing R. P. A., 1845, s. 5), enables the lessee to covenant with the mortgagee though not a party to the lease, so that a covenant properly framed, that is with the mortgagor, "and other the person entitled to the reversion," would after that Act run with the legal reversion.

Leases under powers.

Now, under s. 141, *sup.*, wherever there is a legal reversion, that is, where a lease is made by a legal owner, or by means of an ordinary power, or a statutory power as under s. 99 of this Act, or under the S. L. A., enabling a legal term to be carved out of the reversion, the lessee's covenants, whether so expressed or not, are annexed to and run with the reversion, and are no longer covenants in gross. Thus a mortgagee in possession can enforce the lessee's covenants and the conditions contained in a lease granted by the mortgagor under s. 99 of this Act: *Municipal, &c. Society* v. *Smith*, 1888, 22 Q. B. D. 70; *Re Ind Coope*, 1911, 2 Ch. at 231 and 232.

So under this s. the covenants of a lessor who has power to bind the reversionary estate, will run with it, and bind the reversioner, though the lessor be tenant for life only, or, as mortgagor, be entitled subject to a mortgage term. Compare *Wilson* v. *Queen's Club*, 1891, 3 Ch. 522, where, however, the corresponding provisions in the C. A., 1881, were not expressly referred to.

"With reference."

"With reference, &c.": see note to s. 141, *sup.*

(2) This section applies to leases made before or after the commencement of this Act, whether the severance of the reversionary estate was effected before or after such commencement:

Provided that, where the lease was made before the first day of January eighteen hundred and eighty-two, nothing in this section shall affect the operation of any severance of the reversionary estate effected before such commencement.

This section takes effect without prejudice to any liability affecting a covenantor or his estate.

Retrospective.

To give effect to 32 Hen. 8, c. 34, s. 2, it was necessary to make this s. apply to leases whenever created.

But as C. A., 1881, s. 11, only applied to leases made after 1881, the effect of a severance of a reversion made before 1882 was left unaffected; the old law applies, otherwise existing beneficial interests would have been altered.

Lessor's liability after assignment.

The last para. of this sub-s. is taken from the Act of 1540; it gives effect to the old law: see note to last sub-s., "Lessor's liability after assignment."

Effect of licences granted to lessees.

143.—(1) Where a licence is granted to a lessee to do any act, the licence, unless otherwise expressed, extends only—

(a) to the permission actually given; or

(b) to the specific breach of any provision or covenant referred to; or

(c) to any other matter thereby specifically authorised to be done;

and the licence does not prevent any proceeding for any

subsequent breach unless otherwise specified in the licence.

This s. reproduces the L. P. (Amend.) A., 1859, ss. 1, 2.

Law before 13th Aug., 1859.

Before that Act a covenant or condition was not severable; a licence to do any act in breach of a covenant or condition determined the covenant or condition: *Dumpor's Case*, 4 Co. 119b; see also *Knight's Case*, 5 Rep. 55b; but this rule did not apply to Crown lands: Crown Lands A., 1845, s. 5.

Waiver of a covenant in a lease.

As to a similar restriction on the waiver of covenants in a lease, see s. 148, *inf.*

Exaction of fines for licence to assign prohibited.

An exaction of a fine for licence to assign is prohibited by s. 144, *inf.*

(2) Notwithstanding any such licence—

(a) All rights under covenants and powers of re-entry contained in the lease remain in full force and are available as against any subsequent breach of covenant, condition or other matter not specifically authorised or waived, in the same manner as if no licence had been granted; and

(b) The condition or right of entry remains in force in all respects as if the licence had not been granted, save in respect of the particular matter authorised to be done.

Saving of covenants, conditions and rights of re-entry.

Rights of entry exercisable over or in respect of a legal term of years absolute remain legal interests: s. 1 (2) (e), *sup.*

(3) Where in any lease there is a power or condition of re-entry on the lessee assigning, subletting or doing any other specified act without a licence, and a licence is granted—

(a) to any one of two or more lessees to do any act, or to deal with his equitable share or interest; or

(b) to any lessee, or to any one of two or more lessees to assign or underlet part only of the property, or to do any act in respect of part only of the property;

the licence does not operate to extinguish the right of entry in case of any breach of covenant or condition by the co-lessees of the other shares or interests in the property, or by the lessee or lessees of the rest of the property (as the case may be) in respect of such shares or interests or remaining property, but the right of entry remains in force in respect of the shares, interests or property not the subject of the licence.

This subsection does not authorise the grant after

the commencement of this Act of a licence to create an undivided share in a legal estate.

Covenants against assignment or underletting.

Relief can be granted on a breach after 1925 of a covenant not to assign or underlet: s. 146 (8).

Where a mortgagee sells, a licence to assign must not be unreasonably refused: s. 89 (1), *sup.*; no licence to assign is required where a title is acquired by foreclosure or under the Limitation Acts, and the mortgagee executes a vesting deed as evidence of his title: *ib.*, sub-ss. (2), (3).

Abolition of undivided shares.

The last para. of this sub-s. refers to ss. 34—8, *sup.*, and 1st Sch., Pts. IV. and V.; also S. L. A., 1925, s. 36; these provisions apply to leasehold interests as well as freehold interests. The reference to an "equitable share or interest" applies to the share in the proceeds of sale; for the expression "equitable interest" extends to proceeds of sale: s. 205 (1) (x).

As to assignments of part of the land comprised in a lease: s. 190.

(4) This section applies to licences granted after the thirteenth day of August, eighteen hundred and fifty-nine.

Extent.

This was the date of the commencement of the L. P. (Amend.) A., 1859.

No fine to be exacted for licence to assign.

144. In all leases containing a covenant, condition, or agreement against assigning, underletting, or parting with the possession, or disposing of the land or property leased without licence or consent, such covenant, condition, or agreement shall, unless the lease contains an express provision to the contrary, be deemed to be subject to a proviso to the effect that no fine or sum of money in the nature of a fine shall be payable for or in respect of such licence or consent; but this proviso does not preclude the right to require the payment of a reasonable sum in respect of any legal or other expense incurred in relation to such licence or consent.

This s. replaces C. A., 1892, s. 3.

Application.

This s. applies to all leases, whether executed before or after 1893: *West* v. *Gwynne*, 1911, 2 Ch. 1.

Fine or sum of money in the nature of a fine.

For the definition of "fine," see s. 205 (1) (xxiii).

Where a lease is granted under a building contract relating also to other property, the lessor may require as a condition for granting a licence to assign, the deposit of a sum to secure the performance of the unperformed part of the contract, such deposit not being a fine or in the nature of a fine: *Re Cosh*, 1897, 1 Ch. 9.

Covenant by assignee.

Qu., whether if a lessor stipulated that the assignee should covenant to pay the rent and perform the covenants of the lease, he would be demanding a consideration or benefit in the nature of a fine: *Waite* v. *Jennings*, 1906, 2 K. B. 11.

Increased rent.

An increased rent required as a condition for consenting to an assignment is "a fine or sum of money in the nature of a fine": *Jenkins* v. *Price*, 1907, 2 Ch. 229 (reversed on a point not connected with this s.; 1908, 1 Ch. 10); *West* v. *Gwynne*, *sup.*

Effect of s.

This s. does not make the payment and acceptance of a fine illegal, but only, in the absence of express provision to the contrary, imports into the lease as between the parties a provision that no fine shall be payable: *Waite* v. *Jennings, sup.* Hence the parties to the lease can afterwards agree that a fine shall be paid: *Andrew* v. *Bridgman,* 1907, 2 K. B. 494; 1908, 1 K. B. 596; if such payment is made by the lessee, not under protest, he cannot recover it: *S. C.* So too in *Waite* v. *Jennings, sup.*, where the lessor stipulated for a covenant by the assignee with himself, and the assignee entered into such covenant, it was held, that even if the covenant were in the nature of a fine, it was enforceable by the lessor.

Right to assign without licence.

But if the lessor stipulates for a fine as a condition of giving his consent, the lessee is entitled to assign without further consent: *Jenkins* v. *Price, sup.* (where consent could not be unreasonably withheld); *Andrew* v. *Bridgman, sup.; West* v. *Gwynne, sup.* (where the covenant against assignment was unconditional); he is also entitled to his costs of an action for a declaration to that effect, though no other relief is asked for: *West* v. *Gwynne, sup.*, not following *Jenkins* v. *Price, sup.; Evans* v. *Levy,* 1910, 1 Ch. 452; and see *Young* v. *Ashley Gardens, &c.*, 1903, 2 Ch. 112.

Lessee to give notice of ejectment to lessor.

145. Every lessee to whom there is delivered any writ for the recovery of premises demised to or held by him, or to whose knowledge any such writ comes, shall forthwith give notice thereof to his lessor or his bailiff or receiver, and, if he fails so to do, he shall be liable to forfeit to the person of whom he holds the premises an amount equal to the value of three years' improved or rack rent of the premises, to be recovered by action in any court having jurisdiction in respect of claims for such an amount.

C. L. P. A., 1852, s. 209.

This s. reproduces the C. L. P. A., 1852, s. 209.

"Improved or rack rent."

This means the best rent which could be obtained if the property were let at the date of service of the writ: *Croker* v. *Fothergill,* 1819, 2 B. & Ald. 652 (lessee suffered judgment to go against him in default).

Object of s.

The lessor is entitled to know when an adverse claim, under an alleged paramount title, is made in order that he may, if expedient, defend his title.

No question arises of a lessor losing his title under the Limitation Acts till the lease expires.

Restrictions on and relief against forfeiture of leases and underleases.

146.—(1) A right of re-entry or forfeiture under any proviso or stipulation in a lease for a breach of any covenant or condition in the lease shall not be enforceable, by action or otherwise, unless and until the lessor serves on the lessee a notice—

(a) specifying the particular breach complained of; and

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach; and

(c) in any case, requiring the lessee to make compensation in money for the breach;

and the lessee fails, within a reasonable time thereafter, to remedy the breach, if it is capable of remedy, and to make reasonable compensation in money, to the satisfaction of the lessor, for the breach.

This sub-s. replaces C. A., 1881, s. 14 (1).

Enforcement of forfeitures as respects enfranchised land.

After 1925 a lord seeking to enforce a forfeiture before the manorial incidents have been extinguished must serve a notice on the lines of this s.: see L. P. A., 1922, s. 132; the court has power to grant relief: *ib.*

Copyholds converted into long terms.

This s. is made applicable where copyholds for lives or for years terminable for life or for years are converted into leaseholds: *ib.*, s. 133; also s. 149 (6), *inf.*

"Or otherwise," *i.e.*, by peaceable entry: *Re Riggs*, 1901, 2 K. B. 16.

As to forcible entry, see *Hemmings* v. *Stoke Pogis Golf Club*, 1920, 1 K. B. 720.

Service of notice.

The service of the statutory notice is a condition precedent to the right of action, and an allegation of its due performance is implied in the statement of claim without being expressly pleaded: *Gates* v. *Jacobs, Ltd.*, 1920, 1 Ch. 567.

Form of notice.

As to service of notice, see s. 196, *inf.*; such notice must be in writing. An assignee of a lease is entitled to the benefit of this s. (see sub-s. (5), *inf.*, and note thereto). A notice is sufficiently served on an assignee, if addressed to the original lessee, and all others whom it may concern, and served on the occupier: *Cronin* v. *Rogers*, 1884, 1 Cab. & Ell. 348.

Contents of notice.

The notice should be given in such detail as will enable the lessee to understand what is complained of, so that he may have an opportunity of remedying it before action: *Fletcher* v. *Nokes*, 1897, 1 Ch. 271; *Penton* v. *Barnett*, 1898, 1 Q. B. 276, 281; *Re Serle*, 1898, 1 Ch. 652; *Horsey Estate, Ltd.* v. *Steiger*, 1899, 2 Q. B. 79.

What is or is not a valid notice.

It is sufficient if it calls the attention of the lessee to the particular condition of the premises, which is alleged to be defective; it need not identify every defect: *Fox* v. *Jolly*, 1916, 1 A. C. 1.

The lessor is not bound to specify in what manner the breach is to be remedied: *Piggott* v. *Middlesex C. C.*, 1909, 1 Ch. 134; *Fox* v. *Jolly*, *sup.* A notice is not bad, because it contains an illegal claim: *Lock* v. *Pearce*, 1893, 2 Ch. 271; or because some of the alleged breaches have never taken place: *Pannell* v. *City of London Brewery Co.*, 1900, 1 Ch. 496; *Fox* v. *Jolly*, *sup.*; or because it states that the completion of certain specified items shall not excuse the execution of other repairs, if found necessary: *Fox* v. *Jolly*, *sup.* Whether the decision in *Re Serle*, *sup.*, that a notice sufficiently specific with regard to some of the covenants referred to, but indefinite in relation to another is bad altogether, is not law, *qu.* compare the remarks of Buckmaster, L.C., in *Fox* v. *Jolly*, *sup.* at p. 14, with those of Lord Atkinson on pp. 18 and 19. In *Guillemard* v. *Silverthorne*, 1908, 99 L. T. 584, a notice was held bad which stated that the lease contained certain covenants, which it did not in fact contain, *sed. qu.* whether this decision can be supported.

If the breach is capable of remedy, the notice must require the lessee to remedy it: *North London, &c. Co.* v. *Jacques*, 1883, 32 W. R. 283; but if the lessor does not want compensation, he is not bound to ask for it: *Lock* v. *Pearce*, *sup.*; *Civil S. C. S.* v. *McGrigor*, 1923, 2 Ch. 347.

Reasonable time.

A reasonable interval must elapse after service of notice and before action: *Horsey Estate, Ltd.* v. *Steiger*, *sup.* (two days insufficient); *Civil S. C. S.* v. *McGrigor*, *sup.* (fourteen days sufficient). Where a notice is given in general terms requiring breaches of covenant to be remedied in a reasonable time, an action will not lie until sufficient time has elapsed to satisfy generally all the requirements of the notice; it is not enough to show that sufficient time has been allowed to satisfy some of them: *Hopley* v. *Tarvin Parish Council*, 1910,

74 J. P. 209. The defence that a reasonable time has not been allowed does not require to be specially pleaded under R. S. C., O. 19, r. 14: *S. C.*

Action for declaration.

An action for a declaration of forfeiture for a breach of a covenant to which this s. applies, though not intended to be followed by re-entry, will not lie, unless the notice required by sub-s. (1) has been duly served and a reasonable time has elapsed: *Wilson* v. *Rosenthal*, 1906, 22 T. L. R. 233.

Reversion in mortgage.

Where the lease was made before 1882 and there was a legal mortgage of the reversion, it was held that the notice must be given by the mortgagee: *Matthews* v. *Usher*, 1900, 2 Q. B. 535; but, if the lease is made after 1881, either before the mortgage, or by the mortgagor under C. A., 1881, s. 18, now s. 99, *sup.*, then the mortgagor while in possession can enforce the right of re-entry: *Turner* v. *Walsh*, 1909, 2 K. B. 484; hence would be the proper person to give the notice under this s. After 1925 the mortgagor will have a legal estate till it is divested by sale, foreclosure or title by possession.

Position of mortgagor.

Continuing breach.

Where the breach continues—*e.g.*, of a covenant to repair—an acknowledgment of the tenancy—*e.g.*, an action for rent—after notice does not render a new notice necessary: *Penton* v. *Barnett*, 1898, 1 Q. B. 276. In that case no repairs at all had been done by the tenant after the notice. In *Guillemard* v. *Silverthorne*, 1908, 99 L. T. 584, where some repairs had been done, rent for three quarters had been accepted and negotiations had taken place since the notice, it was held that the principle of *Penton* v. *Barnett* did not apply. *Penton* v. *Barnett*, however, did not turn on the fact that no repairs at all had been done. The *ratio decidendi* was, that when the lessor has given the prescribed notice, and a reasonable time has elapsed, the conditions imposed by this s. have been complied with, with the result that the lessor is in the same position as if this s. had never been passed. In *New River Co.* v. *Crumpton*, 1917, 1 K. B. 762, where some repairs had been done and rent had been accepted, *Penton* v. *Barnett* was followed. *Guillemard* v. *Silverthorne* may be supported on the ground that on the special facts of the case, the lessor must be deemed to have waived the right to rely on the notice already given.

Covenant to erect buildings.

A covenant to erect buildings within a specified time having been waived by acceptance of rent, the lessor cannot rely on the continuing breach of a covenant to keep the buildings in repair: *Stephens* v. *Junior Army and Navy Stores, Ltd.*, 1914, 2 Ch. 516, disapproving *dicta* of Stirling, J., in *Jacob* v. *Down*, 1900, 2 Ch. 156.

To repair.

A repairing covenant remains in force though part of the property has been acquired and demolished by a local authority under statutory powers: *Piggott* v. *Middlesex C. C.*, 1909, 1 Ch. 134.

Implied release.

Lapse of time and the circumstances of the case may justify the inference that a repairing covenant has been released: *Gibbon* v. *Payne*, 1905, 22 T. L. R. 54; 23 *ib.*, 250.

Agreement for a lease.

This s. does not apply to an agreement for a lease where there is no present title to specific performance: *Ayling* v. *Mercer*, 1885, W. N., p. 166; *Swain* v. *Ayres*, 1887, 20 Q. B. D. 585, 21 *ib.* 289; *Coatsworth* v. *Johnson*, 1886, 55 L. J. Q. B. 220; and cp. *Greville* v. *Parker*, 1910, A. C. 335, but it does apply where there is such a title: *Swain* v. *Ayres*, 21 Q. B. D. at pp. 292-3; *Lowther* v. *Heaver*, 1889, 41 Ch. D. 248, pp. 260, 261; *Strong* v. *Stringer*, 1889, W. N., p. 135.

This s. applies to a derivative underlease, also to an agreement for a lease where specific performance would be granted, and to a grant at fee farm rent, or securing a rent by condition: sub-s. (5), *inf.*

Tenancy agreement.

By s. 154, *inf.*, the provisions relating to leases apply to any tenancy, except where the contrary is expressly provided; there is nothing in sub-s. (5), *inf.*, to exclude this; hence the *dictum* to the contrary in *Charrington* v. *Camp*, 1902, 1 Ch. at 389, appears to have been overruled, but a valid tenancy must

be distinguished from an agreement for a lease without a right to specific performance.

Recovery of compensation costs.

The compensation claimed is measured by the breach, only where the breach cannot be remedied. As to the recovery by the lessor of all reasonable costs and expenses incurred by the employment of a solicitor, surveyor, valuer or otherwise, in reference to a right of re-entry or forfeiture which is waived, see sub-s. (3), *inf.*

Receiver.

As to the appointment of a receiver to preserve the licences of licensed property *pendente lite*, see *Charrington & Co.* v. *Camp, sup.; Whitbread* v. *Grain*, 1907, 23 T. L. R. 462; *Leney & Sons, Ltd.* v. *Callingham*, 1908, 1 K. B. 79.

Statutory tenant under Increase of Rent, &c. (Restrictions), Act, 1920.

The s. has no application to a statutory tenant under the Increase of Rent, &c. (Restrictions) A., 1920: *Brewer* v. *Jacobs*, 1923, 1 K. B. 528.

As to an underlessee's right to relief against the superior landlord, see sub-ss. (4) and (5), *inf.*, and notes thereto.

Sub-lessee's right to relief.

(2) Where a lessor is proceeding, by action or otherwise, to enforce such a right of re-entry or forfeiture, the lessee may, in the lessor's action, if any, or in any action brought by himself, apply to the court for relief; and the court may grant or refuse relief, as the court, having regard to the proceedings and conduct of the parties under the foregoing provisions of this section, and to all the other circumstances, thinks fit; and in case of relief may grant it on such terms, if any, as to costs, expenses, damages, compensation, penalty, or otherwise, including the granting of an injunction to restrain any like breach in the future, as the court, in the circumstances of each case, thinks fit.

Powers of the court to grant relief.

This sub-s. replaces C. A., 1881, s. 14 (2).

"The court."

"The court," *i.e.*, the High Court or the Palatine Court: s. 203 (3), *inf.*

Lessor's action.

If the lessor's action is in K. B. D., the lessee can apply in that action, notwithstanding s. 203 (4), *inf.*: *Cholmeley's School* v. *Sewell*, 1893, 2 Q. B. 254.

If there is no action by the lessor, or the lessor's action is in the county court, the lessee's application must be by action in the Ch. D. of the High Court instituted by writ, not by originating summons: *Lock* v. *Pearce*, 1893, 2 Ch. 271, 274.

Relief before re-entry.

The tenant can only obtain relief under this s. before the lessor has re-entered: *Quilter* v. *Mapleson*, 1882, 9 Q. B. D. 672, 675, 676; *Rogers* v. *Rice*, 1892, 2 Ch. 170; not following *North London Land Co.* v. *Jacques*, 1883, 32 W. R. 283; but if he has applied for relief before re-entry, that is enough: *Lock* v. *Pearce*, 1892, 2 Ch. 328, 332.

Discretion of court.

On applications for relief under this s. the court will consider all the circumstances of the case and the conduct of the parties; as the discretion given to the court is very wide, rigid rules cannot be laid down for guiding that discretion. The rules enunciated by Cozens-Hardy, M.R., in *Rose* v. *Spicer* 1911, 2 K. B. 234, 241, can at the most be regarded as useful general maxims: *S. C. sub. nom., Hyman* v. *Rose*, 1912, A. C. 623.

Cases.

Relief was refused in *Scott* v. *Brown*, 1884, 51 L. T. 746; see also *Lock* v. *Pearce, sup.* It was granted upon terms in *Quilter* v. *Mapleson, sup.;* in *North London Land Co.* v. *Jacques, sup.;* in *Bond* v. *Freke*, 1884, W. N. 47;

in *Mitchison* v. *Thomson*, 1883, 1 Cab. & Ell. 72; in *Batson* v. *London S. Board*, 1904, 69 J. P. 9; and in *Hyman* v. *Rose*, *sup.*; the time fixed by the order granting relief for complying with the terms was subsequently extended in *Gaze* v. *London Drapery Stores*, 1900, 44 Sol. J. 722.

Effect of order for relief.

An order for relief restores the lease as though it had never been forfeited: *Dendy* v. *Evans*, 1910, 1 K. B. 263; and see 54 Sol. J. 126, 158.

What relief before 1882.

Before the C. A., 1881, no relief could have been obtained against the right of re-entry for breach of covenant in a lease, except in the case of a covenant for payment of rent: *Hill* v. *Barclay*, 1811, 18 Ves. 56; *Bracebridge* v. *Buckley*, 1816, 2 Price, 200; *Nokes* v. *Gibbon*, 1856, 3 Drew. 681; *Howard* v. *Fanshawe*, 1895, 2 Ch. 581; or except in cases of accident or surprise: *Hill* v. *Barclay*, *sup.*, at p. 62; or under special circumstances enabling a Court of Equity to grant relief: *Bamford* v. *Creasy*, 1862, 3 Giff. 675; *Bargent* v. *Thomson*, 1864, 4 Giff. 473; *Hughes* v. *Metrop. R. Co.*, 1877, 2 A. C. 439; *Barrow* v. *Isaacs*, 1891, 1 Q. B. 417; *Eastern Telegraph Co.* v. *Dent*, 1899, 1 Q. B. 835, but carelessness on the part of the person seeking relief was not considered to be a mistake or accident affording a ground of relief: *Barrow* v. *Isaacs*, *sup.*; *Eastern Telegraph Co.* v. *Dent*, *sup.*

Carelessness.

Omission to insure.

So long as the property had not been destroyed by fire, and provided there had been no fraud or gross negligence, Courts of Equity were also empowered under Lord St. Leonards' A., ss. 4—9, to grant relief in case of omission to insure against fire. That power was extended to Courts of Common Law by the C. L. P. A., 1860, s. 2. These enactments were repealed by the C. A., 1881.

Lessee's negligence immaterial under this s.

So far as relief under this s. is concerned, negligence on the part of the lessee seeking relief appears to be immaterial: *Quilter* v. *Mapleson*, *sup.*; *Matthews* v. *Smallwood*, 1910, 1 Ch. 777, at p. 793; but, where an underlessee is seeking relief under sub-s. (4), *inf.*, in respect of a breach of covenant against which his lessor could not have obtained relief under this s. the question of negligence is material: *Imray* v. *Oakshette*, 1897, 2 Q. B. 218; *Matthews* v. *Smallwood*, *sup.*, at p. 794.

Bankrupt lessee.

The right of a lessee to be relieved from the forfeiture of a lease is a thing in action which vests in his trustee in bankruptcy; the trustee can sell such right, and assign it to a purchaser: *Howard* v. *Fanshawe*, 1895, 2 Ch. 581.

Form of order.

Where an order for relief is made subject to the lessee performing certain conditions, the court should, it is submitted, require him to give an undertaking to perform them. Otherwise if, having performed some of such conditions, he declines to perform the remainder, the court has no power to compel him to do so, and the order for relief must be treated as abandoned: *Talbot* v. *Blindell*, 1908, 2 K. B. 114.

For form of order, see Chitty's King's Bench Forms, 14th ed. p. 706.

How damages are to be ascertained.

The Act gives no guide for estimating the penalty to be imposed on the lessee: and see *Lepla* v. *Rogers*, 1893, 1 Q. B. 31. Where there has been a breach of a covenant to insure, but no loss, it is difficult to say what sum should be paid to the landlord. The probability is that the only penalty will be costs: *Quilter* v. *Mapleson*, 1882, 9 Q. B. D. 678.

As to the circumstances in which a lessee can recover from his underlessee the costs of proceedings by the lessee as against the head lessor for relief under this sub-s., see *Clare* v. *Dobson*, 1911, 1 K. B. 35, 41.

(3) A lessor shall be entitled to recover as a debt due to him from a lessee, and in addition to damages (if any), all reasonable costs and expenses properly incurred by the lessor in the employment of a solicitor and surveyor or valuer, or otherwise, in reference to any breach

giving rise to a right of re-entry or forfeiture which, at the request of the lessee, is waived by the lessor, or from which the lessee is relieved, under the provisions of this Act.

This sub-s. replaces C. A., 1892, s. 2 (1).

Right of lessor to costs.

In *Skinners' Co.* v. *Knight*, 1891, 2 Q. B. 542, the Court of Appeal held a lessee not liable to pay to his lessors (plaintiffs in an action for ejectment), as compensation for breach of a covenant in the lease, the lessor's costs of employing a solicitor and surveyor in the preparation and service of the notice required by C. A., 1881, s. 14 (1), now replaced by sub-s. (1), *sup.* This sub-s. gives a lessor, in the cases where it applies, a right of action for such costs.

Independently of this sub-s., the court has power, where the lessee is applying for relief (in *Skinners' Co.* v. *Knight* he was not), to make the payment by the lessee, of such costs, a term of the relief, under sub-s. (2), *sup.*: *Bridge* v. *Quick*, 1892, 61 L. J. Q. B. 375; or to order their payment, by the lessee, as "charges or expenses" under s. 203 (5), *inf.*; compare *Re Smith's S. E.*, 1891, 3 Ch. 65, pp. 73-5, a decision on S. L. A., 1882, s. 46 (6), now S. L. A., 1925, s. 113 (8). A covenant to pay the costs is not an ordinary covenant: *Allen* v. *Smith*, 1924, 2 Ch. 308.

"Lessee."

Lessee (sub-s. (5) (b), *inf.*) includes an original or derivative underlessee, overruling in this respect *Nind* v. *Nineteenth Century Bldg. Socy.*, 1894, 2 Q. B. 226.

"Relieved."

The lessee is not "relieved" unless there is some intervention of the court under this s.: see *S. C.* See also next sub-s.

(4) Where a lessor is proceeding by action or otherwise to enforce a right of re-entry or forfeiture under any covenant, proviso, or stipulation in a lease, or for non-payment of rent, the court may, on application by any person claiming as under-lessee any estate or interest in the property comprised in the lease or any part thereof, either in the lessor's action (if any) or in any action brought by such person for that purpose, make an order vesting, for the whole term of the lease or any less term, the property comprised in the lease or any part thereof in any person entitled as under-lessee to any estate or interest in such property upon such conditions as to execution of any deed or other document, payment of rent, costs, expenses, damages, compensation, giving security, or otherwise, as the court in the circumstances of each case may think fit, but in no case shall any such under-lessee be entitled to require a lease to be granted to him for any longer term than he had under his original sub-lease.

Rights of under-lessee to a vesting order.

This sub-s. replaces C. A., 1892, s. 4; the words "or for non-payment of rent" are new, but give effect to the existing law: *Gray* v. *Bonsall*, 1904, 1 K. B. 601.

Relief in respect of non-payment of rent.

As to the right to give relief when proceedings are taken to forfeit a lease for non-payment of rent: Jud. A., 1925, s. 46.

"Is proceeding."

The underlessee must apply for relief before the lessor has re-entered: see *Rogers* v. *Rice*, 1892, 2 Ch. 170.

"Or otherwise," *i.e.*, by peaceable entry: *Re Riggs*, 1901, 2 K. B. 16.

Mortgagee by sub-demise.

It may happen that proceedings are carried through to execution before the underlessee—who may be a mortgagee, not in possession—hears of them; and *qu.*, if in such a case, the court would set aside the execution, and give the underlessee leave to defend: see *Rogers* v. *Rice*, *sup.*; *North London Land Co.* v. *Jacques*, 1883, 32 W. R. 283.

A chargee by way of legal mortgage will be in the same position as a mortgagee by sub-demise: s. 87, *sup.*

Application by underlessee.

The underlessee's application may be by way of counterclaim in the lessor's action, though brought in the K. B. D.: *Cholmeley's School* v. *Sewell*, 1893, 2 Q. B. 254; and see note to sub-s. (2), *sup.*

Relief given to underlessees.

Under this s. relief can be given to an underlessee against a forfeiture of the head lease for non-payment of rent: *Gray* v. *Bonsall*, 1904, 1 K. B. 601. Wider relief may be given under this s. to an underlessee than the lessee could ask. In *Cholmeley's School* v. *Sewell*, *sup.*, the lessor relied on a forfeiture by the lessee's bankruptcy. The property was a public-house, so that the lessee could not have got relief under s. 2 (2) of the C. A., 1892, now replaced by sub-s. (10), *inf.*, by reason of sub-s. (3) (c) of the Act of 1892, now replaced by sub-s. (9) (c), *inf.*; but it was held in the same case (1894, 2 Q. B. 906) that the s. nevertheless authorised relief to the underlessee. This ruling was confirmed by the C. A. in *Imray* v. *Oakshette*, 1897, 2 Q. B. 218. In such cases the jurisdiction to grant relief will be exercised sparingly; if the underlessee has been negligent, as by omitting to investigate the title, relief will be refused: *Imray* v. *Oakshette*, *sup.*; *Matthews* v. *Smallwood*, 1910, 1 Ch. 777; criticised in *Hurd* v. *Whaley*, 1918, 1 K. B. 448.

The fact that an underlessee has been guilty of a breach of his covenants with the lessee does not disentitle him to relief: *Hurd* v. *Whaley*, *sup.*

"Payment of rent."

In fixing the terms of the new lease to be granted to the underlessee, the court has power to vary the rent reserved by the original underlease: *Ewart* v. *Fryer*, 1901, 1 Ch. 499.

See generally as to the powers of the court under this s., and the terms upon which relief will be granted, *Cholmeley's School* v. *Sewell*, 1894, 2 Q. B. 906; *Ewart* v. *Fryer*, *sup.*; *London, &c. Co.* v. *Thomson*, 1903, 89 L. T. 50.

Terms of vesting order.

The powers of the court, under this sub-s., in relation to the terms of the vesting order, are wider than those under similar provisions in the Bkcy. A. 1914, s. 54; and see *Re Finley*, 1888, 21 Q. B. D. 475; *Re Smith*, 1890, 25 *ib.* 536; *Re Carter & Ellis*, 1905, 1 K. B. 735—decisions on corresponding provisions in the Bkcy. As., 1883 and 1890.

Term given by vesting order.

It is conceived that where, as in *Cholmeley's School* v. *Sewell*, *sup.*, judgment is given for the lessor, with an order vesting the property in the underlessee for the length of his sub-term, his original sub-term is gone by the forfeiture: see *G. W. R. Co.* v. *Smith*, 1875, 2 Ch. D. 235, at p. 253; and that a new term is created by the vesting order, in respect of which the underlessee must give the lessor proper covenants, and a proper condition of re-entry: *Serjeant* v. *Nash*, 1903, 2 K. B. 304, at p. 313: compare the forms of Deeds of Defeasance, given by lessees for reviving conditions of re-entry lost under the rule in *Dumpor's Ca.*, in Davidson's Conveyancing, 2nd ed., vol. v., pt. ii., p. 1032; Bythewood and Jarman, 3rd ed., vol. iii., pp. 685, 687-95; also *Howard* v. *Fanshawe*, 1895, 2 Ch. 581.

Relief of underlessees apart from this sub-s.

Apart from this s. an underlessee could, before 1926, have obtained relief against forfeiture of the head lease for non-payment of rent under the ordinary equitable jurisdiction and the C. L. P. A., 1860, s. 1 (now replaced by Jud. A., 1925, s. 46), and C. L. P. A., 1852, s. 212: see *Doe* v. *Byron*, 1845, 1 Com. B.

623; *Hare* v. *Elms*, 1893, 1 Q. B. 604; *Gray* v. *Bonsall*, 1904, 1 K. B. 601; *Humphreys* v. *Morten*, 1905, 1 Ch. 739; *Moore* v. *Smee*, 1907, 2 K. B. 8. The addition of the words "or for non-payment of rent" in this sub-s. will result in applications after 1925 by underlessees being made under this s.

It was unnecessary for the underlessee to prove his title; the fact that he was tenant in possession was sufficient: *Moore* v. *Smee, sup.*

Proof of title.

In applications under this s. it is sufficient that he is a "person claiming as underlessee," but where he was proceeding under the C. L. P. As. after the head lease had been actually determined by re-entry or judgment in ejectment, the lessee had as a rule to be before the court: *Hare* v. *Elms, sup.;* though this was dispensed with under special circumstances: *Humphreys* v. *Morten, sup.*

(5) For the purposes of this section—

(a) "Lease" includes an original or derivative underlease; also an agreement for a lease where the lessee has become entitled to have his lease granted; also a grant at a fee farm rent, or securing a rent by condition;

(b) "Lessee" includes an original or derivative underlessee, and the persons deriving title under a lessee; also a grantee under any such grant as aforesaid and the persons deriving title under him;

(c) "Lessor" includes an original or derivative underlessor, and the persons deriving title under a lessor; also a person making such grant as aforesaid and the persons deriving title under him;

(d) "Underlease" includes an agreement for an underlease where the underlessee has become entitled to have his underlease granted;

(e) "Underlessee" includes any person deriving title under an underlessee.

Definitions.

This sub-s. replaces C. A., 1881, s. 14 (3), as amended by C. A., 1892, s. 5.

"Lease."

The meaning of "lease" in this part of the Act is extended by s. 154, *inf.*, to include any tenancy, unless the contrary is expressly provided, but this would not extend to an agreement to grant a lease which remains to be specifically performed where the lessee has not a right to specific performance. And see note to sub-s. (1), tit. "Tenancy agreement."

Grants at fee farm rents.

Para. (a) effects a wide extension of the operation of the s.; see also as to rentcharges, ss. 77 (implied covenants), 190 (equitable apportionment and remedies), 205 (1) (xxiii) ("rent" and "rentcharge").

(6) This section applies although the proviso or stipulation under which the right of re-entry or for-

feiture accrues is inserted in the lease in pursuance of the directions of any Act of Parliament.

This sub-s. replaces C. A., 1881, s. 14 (4).

Statutory rights of entry.

As to rights of entry to be inserted in leases pursuant to a statute: s. 99 (7), *sup.*; also S. L. A., 1925, s. 42 (1) (iii).

Leases formerly renewable.

Rights of re-entry in a lease or underlease will apply to breaches of the covenants implied under L. P. A., 1922, 15th Sch., para. 10 (1), to register assignments, &c. and to produce the lease, &c., to the lessor before 1927.

(7) For the purposes of this section a lease limited to continue as long only as the lessee abstains from committing a breach of covenant shall be and take effect as a lease to continue for any longer term for which it could subsist, but determinable by a proviso for re-entry on such a breach.

Provision against evasion.

This sub-s. replaces C. A., 1881, s. 14 (5); the object is to prevent evasion.

(8) This section does not extend—

(i) To a covenant or condition against assigning, underletting, parting with the possession, or disposing of the land leased where the breach occurred before the commencement of this Act; or

Covenant against assignment, &c. breach before 1926.

This sub-s. keeps alive the provisions of the C. A., 1881, s. 14 (6) (i), where the breach occurred before 1926.

Breach after 1926.

If the breach occurs after 1926, the court can give relief to a lessee or underlessee under this s., subject to the general principles applicable to the breach of any other covenant, and notice must be given under this s.

Matters material if the breach occurs before 1926.

The following points may still be material where the breach occurs before 1926:—

Covenant against assigning, &c. part.

In para. (i) of the sub-s. the covenants referred to are covenants against assigning ". . . the land leased." *Qu.* whether this para. applies where the covenant is not to assign . . . the land "or any part thereof," and the breach of covenant affects part only of the property: see *Russell* v. *Beecham*, 1924, 1 K. B. 525; if the para. does not apply, then the court can relieve against a breach affecting part, though it occurred before 1926, and notice must be served on the lessee before proceedings are taken. If the breach occurs after 1925, relief can be given whether the breach affects the whole or part.

"Parting with" distinguished from "parting with the possession of."

A covenant not "to assign or part with this lease or the premises hereby demised" is a covenant against parting with the whole of the lessor's interest, and does not cover a sub-letting: *Russell* v. *Beecham, sup.* A covenant "not to part with the possession of the premises" would: *S. C.*

Covenant against assignment.

A covenant against assignment is only broken by a legal assignment, not by a declaration of trust, and delivery of possession; nor would it be broken by a charge by way of legal mortgage: *Gentle* v. *Faulkner*, 1900, 2 Q. B. 267; nor is it broken by an assignment of part of the premises, where the covenant omits the words "or any part thereof": *Grove* v. *Portal*, 1902, 1 Ch. 727; *Wilson* v. *Rosenthal*, (1906) 22 T. L. R. 233; and see *Daly* v. *Edwardes*, 1900, 82 L. T. 372; 83 *ib.* 548; and H. L. (*sub nom. Edwardes* v. *Barrington*), 85 L. T. 650; but if after the assignment of part with consent

the residue were assigned without consent, the covenant would be broken: *Chatterton* v. *Terrell*, 1923, A. C. 578; and see and distinguish *Roberts* v. *Enlayde, Ltd.*, 1924, 1 K. B. 335.

Bankruptcy of lessee.

Qu. whether the lessee's being adjudicated bankrupt on his own petition operates as a breach of his covenant not to assign. The head note in *Re Riggs*, 1901, 2 K. B. 16, seems to be too wide. That was a special case, as the lease contained a condition of forfeiture on bankruptcy as well as on assignment without licence.

Consent of lessor to assignment, &c.

As to the necessity of applying for the lessor's consent, where required, even though it cannot be arbitrarily or unreasonably withheld, and no valid objection could be taken to the proposed assignment or underlease: see *Barrow* v. *Isaacs*, 1891, 1 Q. B. 417; *Eastern Telegraph Co.* v. *Dent*, 1899, 1 Q. B. 835; *Lewis, &c.* v. *Pegge*, 1914, 1 Ch. 782.

A covenant not to assign without the lessor's consent applies to a reassignment to the original lessee: *McEacharn* v. *Colton*, 1902, A. C. 104; also to a release by one joint-tenant to the other: *Langton* v. *Henson*, 1905, 92 L. T. 805.

Mortgage.

A covenant against assigning or underletting is broken by an assignment or sub-demise by way of mortgage: *Serjeant* v. *Nash*, 1903, 2 K. B. 304; but see s. 89 (1) as to assignments on sale by a mortgagee.

Not to share possession.

Para. (i) does not extend to a covenant against sharing the possession of the land leased: *Jackson* v. *Simons*, 1923, 1 Ch. 373; hence relief can be granted on breach thereof.

It is a covenant which runs with the land, and binds the assigns, although not mentioned: *Goldstein* v. *Sanders*, 1915, 1 Ch. 549; *Re Stephenson, ib.* 802.

Generally as to covenants not to assign, &c.

See also as to this covenant, *Harman* v. *Ainslie*, 1904, 1 K. B. 698; the cases cited in Foa, Landlord and Tenant, 5th ed., pp. 267—279; *Lewis, &c.* v. *Pegge, sup.*

Winding up.

It is not binding on a trustee in bankruptcy: *Doe* v. *Bevan*, 3 M. & S. 353; but is binding on a liquidator in the winding up of a company: *Re Farrow's Bank, Ltd.*, 1921, 2 Ch. 164 (compulsory); *Cohen* v. *Popular Restaurants, Ltd.*, 1917, 1 K. B. 480 (voluntary).

Covenant against underletting.

An agreement to give possession to a purchaser pending completion, with a proviso for redelivery of possession if purchase not completed, is not an underletting: *Horsey Estate, Ltd.* v. *Steiger*, 1899, 2 Q. B. 79.

Herbage; agistment.

The letting of the growing herbage of pasture lands is, but, *semble*, agistment is not a breach of a covenant against underletting: *Richards* v. *Davies*, 1921, 1 Ch. 90.

Disposing of land leased.

A condition against assignment for the benefit of creditors is not a condition against "disposing of the land leased": *Gentle* v. *Faulkner*, 1900, 2 Q. B. 267.

Dealings by sub-lessees.

That a covenant or condition against assigning, &c., does not ordinarily relate to dealings by sub-lessees, see *Williamson* v. *W.*, 1874, 9 Ch. 729; *Haywood* v. *Silber*, 1885, 30 Ch. D. 404; *Mackusick* v. *Carmichael*, 1917, 2 K. B. 581; and compare *Bryant* v. *Hancock*, 1898, 1 Q. B. 716.

(ii) In the case of a mining lease, to a covenant or condition for allowing the lessor to have access to or inspect books, accounts, records, weighing machines or other things, or to enter or inspect the mine or the workings thereof.

Inspection, &c. under mining lease.

This para. replaces C. A., 1881, s. 14 (6) (ii).

As to meaning of "mining lease": s. 205 (1) (xiv), *inf.*

(9) This section does not apply to a condition for forfeiture on the bankruptcy of the lessee or on taking in execution of the lessee's interest if contained in a lease of—

(a) Agricultural or pastoral land;

(b) Mines or minerals;

(c) A house used or intended to be used as a public-house or beershop;

(d) A house let as a dwelling-house, with the use of any furniture, books, works of art, or other chattels not being in the nature of fixtures;

(e) Any property with respect to which the personal qualifications of the tenant are of importance for the preservation of the value or character of the property, or on the ground of neighbourhood to the lessor, or to any person holding under him.

Forfeiture on bankruptcy, &c. of lessee holding under certain leases.

This sub-s. reproduces C. A., 1892, s. 2 (3).

A condition for forfeiture on bankruptcy refers only to the bankruptcy of the person for the time being possessed of the term: *Smith* v. *Gronow,* 1891, 2 Q. B. 394; as to this condition, see also *Ex p. Gould,* 1884, 13 Q. B. D. 454.

Liquidation of company.

As to the meaning of "bankruptcy," see s. 205 (1) (i), *inf.* It includes liquidation by arrangement and the winding up of a company, thus confirming the decisions given in *Horsey Estate, Ltd.* v. *Steiger,* 1899, 2 Q. B. 79; *Fryer* v. *Ewart,* 1902, A. C. 187.

"Agricultural land."

Land may be agricultural, notwithstanding that there is a factory on it: *Ferguson & Co.* v. *F.*, 1924, 1 Ir. R. 22.

(10) Where a condition of forfeiture on the bankruptcy of the lessee or on taking in execution of the lessee's interest is contained in any lease, other than a lease of any of the classes mentioned in the last sub-section, then—

(a) if the lessee's interest is sold within one year from the bankruptcy or taking in execution, this section applies to the forfeiture condition aforesaid;

(b) if the lessee's interest is not sold before the expiration of that year, this section only applies to the forfeiture condition aforesaid during the first year from the date of the bankruptcy or taking in execution.

Relief on bankruptcy, &c. of lessee for one year.

This reproduces C. A., 1892, s. 2 (2). It does not abrogate the lessor's right to re-enter within the year, but a valid notice must be served before the lease can be forfeited: *Civil S. C. S.* v. *McGrigor,* 1923, 2 Ch. 347, 354—5.

Sale within one year.

If the property is sold within one year the s. applies, without restriction as to time, to enable the title to be confirmed by an order giving relief.

Conditional sale.

A conditional sale within one year is not sufficient: *Ferguson & Co.* v. *F.*, 1924, 1 Ir. R. 22; the sale must be absolute: *Re Castle,* 1906, 94 L. T. 396.

Power to apply for one year.

If the property cannot be sold within the year, para. (b) gives the trustee in bankruptcy time to apply for relief.

To maintain an action for ejectment within the year from the bankruptcy or liquidation a valid notice must have been served under this s.: *Horsey Estate* v. *Steiger,* 1899, 2 Q. B. 79.

(11) This section does not, save as otherwise mentioned, affect the law relating to re-entry or forfeiture or relief in case of non-payment of rent.

Relief from forfeiture on non-payment of rent.

This sub-s. reproduces C. A., 1881, s. 14 (8), but the words "save as otherwise mentioned" are new; they refer to the words "or for non-payment of rent" inserted in sub-s. (4).

See also Jud. A., 1925, s. 46 (replacing C. L. P. A., 1860, s. 1); also C. L. P. A., 1852, s. 212; Foa, L. T., 5th ed., 654.

Statutory tenant.

A statutory tenant under Inc. of Rent, &c. (Restric.) A., 1920, cannot claim relief on payment into court under C. L. P. A., 1852, s. 212: *Brewer* v. *Jacobs.* 1923, 1 K. B. 528.

Relief to underlessee.

Relief can be given under Jud. A., 1925, s. 46, to an underlessee against forfeiture of the head lease for non-payment of rent, but it is more convenient to proceed under sub-s. (4), *sup.*: *Gray* v. *Bonsall,* 1904, 1 K. B. 601.

Law in *Darlington* v. *Hamilton.*

In *Creswell* v. *Davidson,* 1887, 56 L. T. 811, it was held, that even assuming the s. applied to an underlessee as between himself and the head lessor (which it formerly did not: *Burt* v. *Gray,* 1891, 2 Q. B. 98), it did not affect the doctrine established by *Darlington* v. *Hamilton,* 1854, Kay, 550, that on an open contract a good title is not shown to property held by underlease, where the underlease comprises part only of the property in the head lease, so that the purchaser would be subject to the risk of distress and eviction for the default of others. But seeing that under sub-s. (4), *sup.*, the court can vest "part" of the property in an underlessee of part, it is now difficult to justify the rule.

Underlease comprising part.

In *Re Lloyd's Bank, Ltd. & Lillington,* 1912, 1 Ch. 601, which applied *Creswell* v. *Davidson, sup.*, the alteration in the law made by sub-s. (4), *sup.*, appears to have been ignored.

"Usual" proviso for re-entry not extended.

This s. does not affect the rule in *Hodgkinson* v. *Crowe,* 1875, 10 Ch. 622, that a proviso for re-entry, except for non-payment of rent, is not a "usual or customary" clause: *Re Anderton & Milner,* 1890, 45 Ch. D. 476.

(12) This section has effect notwithstanding any stipulation to the contrary.

No contracting out permitted.

This sub-s. replaces C. A., 1881, s. 14 (9).

Retrospective.

The whole of this Part of this Act, except where the contrary is expressly provided, applies to leases, underleases, or other tenancies created before or after 1st January, 1926.

Relief against notice to effect decorative repairs.

147.—(1) After a notice is served on a lessee relating to the internal decorative repairs to a house or other building, he may apply to the court for relief, and if, having regard to all the circumstances of the case (including in particular the length of the lessee's term or interest remaining unexpired), the court is satisfied that

the notice is unreasonable, it may, by order, wholly or partially relieve the lessee from liability for such repairs.

Object of s.

The object of this s. is to prevent unconscionable pressure being brought to bear on tenants to compel them to purchase the reversion.

Internal repairs.

It only extends to internal decorative repairs; and see next sub-s. for further qualifications.

The court will not, it is conceived, make any order during the last year of the term, for the s. does not apply to a covenant to yield up the building in a specified state of repair.

(2) This section does not apply:—

(i) where the liability arises under an express covenant or agreement to put the property in a decorative state of repair and the cove-

Statutory liability of landlord to keep house "fit for human habitation" under para. (iii).

Under the Housing, &c. A., 1909, s. 14, where a house is let for habitation at a rent not exceeding—

(a) in the administrative county of London, forty pounds,

(b) in a borough or urban district, with a population according to the latest census of fifty thousand or upwards, twenty-six pounds,

(c) in any other case, sixteen pounds,

there is an implied condition that the house is fit for human habitation at the commencement of the tenancy.

Under s. 15 (1) a further condition is implied that the landlord will keep it so fit during the continuance of the tenancy.

When Housing, &c. A. does not apply.

Where the term is for three years or more and is subject to a condition that the tenant shall keep the property in habitable condition, these ss. do not apply.

Liability to third parties.

The Act does not impose a liability on the landlord for injuries sustained by a third party, *e.g.*, the tenant's wife: *Middleton* v. *Hall,* 1913, 108 L. T. 804; a third party has no remedy for a breach of the statutory obligation: *Ryall* v. *Kidwell,* 1914, 3 K. B. 135.

Rat pest.

An invasion of rats is not a breach; *semble,* they should not be allowed to live and breed in the house: *Stanton* v. *Southwick,* 1920, 2 K. B. 642.

Maintenance of staircase.

There is no statutory obligation to maintain a staircase used in common: *Dunster* v. *Hollis,* 1918, 2 K. B. 795.

Rights of local authority as to repairs.

The local authority may under the Housing A., 1919, s. 28, compel the owner of a house "suitable for occupation by persons of the working classes" to keep it in "a habitable condition." Where this s. applies, the limitation as to rent

Conditional sale.

Power to apply for one year.

A conditional sale within one year is not sufficient: *Ferguson & Co.* v. *F.*, 1924, 1 Ir. R. 22; the sale must be absolute: *Re Castle,* 1906, 94 L. T. 396.

If the property cannot be sold within the year, para. (b) gives the trustee in bankruptcy time to apply for relief.

To maintain an action for ejectment within the year from the bankruptcy or liquidation a valid notice must have been served under this s.: *Horsey Estate* v. *Steiger,* 1899, 2 Q. B. 79.

(11) This section does not, save as otherwise mentioned, affect the law relating to re-entry or forfeiture or relief in case of non-payment of rent.

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See also Jud. A., 1925, s. 46 (replacing C. L. P. A., 1860, s. 1); also C. L. P. A., 1852, s. 212; Foa, L. T., 5th ed., 654.

Statutory tenant.

Relief to underlessee.

Law in *Darlington* v. *Hamilton.*

Part I. of the Housing, &c. Act, 1909, except s. 7, has been repealed and replaced by the Housing Act, 1925. See in particular s. 1, which replaces ss. 14 and 15 with amendments, and s. 3, which replaces with amendments the Housing Act, 1919, s. 28; that section is also repealed.

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Underlease comprising part.

In *Re Lloyd's Bank, Ltd. & Lillington,* 1912, 1 Ch. 601, which applied *Creswell* v. *Davidson, sup.,* the alteration in the law made by sub-s. (4), *sup.,* appears to have been ignored.

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the notice is unreasonable, it may, by order, wholly or partially relieve the lessee from liability for such repairs.

The object of this s. is to prevent unconscionable pressure being brought to bear on tenants to compel them to purchase the reversion. Object of s.

It only extends to internal decorative repairs; and see next sub-s. for further qualifications. Internal repairs.

The court will not, it is conceived, make any order during the last year of the term, for the s. does not apply to a covenant to yield up the building in a specified state of repair.

(2) This section does not apply:—

(i) where the liability arises under an express covenant or agreement to put the property in a decorative state of repair and the covenant or agreement has never been performed;

(ii) to any matter necessary or proper—

(a) for putting or keeping the property in a sanitary condition, or

(b) for the maintenance or preservation of the structure;

(iii) to any statutory liability to keep a house in all respects reasonably fit for human habitation;

(iv) to any covenant or stipulation to yield up the house or other building in a specified state of repair at the end of the term.

Under the Housing, &c. A., 1909, s. 14, where a house is let for habitation at a rent not exceeding— Statutory liability of landlord to keep house "fit for human habitation" under para. (iii).

(a) in the administrative county of London, forty pounds,

(b) in a borough or urban district, with a population according to the latest census of fifty thousand or upwards, twenty-six pounds,

(c) in any other case, sixteen pounds,

there is an implied condition that the house is fit for human habitation at the commencement of the tenancy.

Under s. 15 (1) a further condition is implied that the landlord will keep it so fit during the continuance of the tenancy.

Where the term is for three years or more and is subject to a condition that the tenant shall keep the property in habitable condition, these ss. do not apply. When Housing, &c. A. does not apply.

The Act does not impose a liability on the landlord for injuries sustained by a third party, *e.g.*, the tenant's wife: *Middleton* v. *Hall,* 1913, 108 L. T. 804; a third party has no remedy for a breach of the statutory obligation: *Ryall* v. *Kidwell,* 1914, 3 K. B. 135. Liability to third parties.

An invasion of rats is not a breach; *semble,* they should not be allowed to live and breed in the house: *Stanton* v. *Southwick,* 1920, 2 K. B. 642. Rat pest.

There is no statutory obligation to maintain a staircase used in common: *Dunster* v. *Hollis,* 1918, 2 K. B. 795. Maintenance of staircase.

The local authority may under the Housing A., 1919, s. 28, compel the owner of a house "suitable for occupation by persons of the working classes" to keep it in "a habitable condition." Where this s. applies, the limitation as to rent Rights of local authority as to repairs.

in the Housing, &c. A., 1909, s. 14, does not apply: *Arlidge* v. *Tottenham U. D. C.*, 1922, 2 K. B. 719.

(3) In this section "lease" includes an underlease and an agreement for a lease, and "lessee" has a corresponding meaning and includes any person liable to effect the repairs.

"Lease." Lease includes a tenancy: s. 154, *inf.*

"Lessee." "Any person liable to effect the repairs": a mortgagee by sub-demise may have taken possession and may be bound to effect the repairs to avoid forfeiture of the lease; or there may be a surety.

(4) This section applies whether the notice is served before or after the commencement of this Act, and has effect notwithstanding any stipulation to the contrary.

Retrospective; no power to contract out. The s. applies to leases made and notices served before 1926.

As to service of notice: s. 196, *inf.*

Waiver of a covenant in a lease.

148.—(1) Where any actual waiver by a lessor or the persons deriving title under him of the benefit of any covenant or condition in any lease is proved to have taken place in any particular instance, such waiver shall not be deemed to extend to any instance, or to any breach of covenant or condition save that to which such waiver specially relates, nor operate as a general waiver of the benefit of any such covenant or condition.

No general waver. This s. reproduces L. P. (Amend.) A., 1860, s. 6.

Costs. As to costs when incurred at the request of lessee: s. 146 (3), *sup.*

Waiver express or implied. Waiver may be express, in which case it should be by deed, unless it is supported by consideration, or it may be implied from an act of the lessor which recognises the continuance of the lease, as by acceptance of rent after a right of re-entry has become enforceable.

Licences to lessees. For the effect of licences granted to a lessee: s. 143, *sup.*

(2) This section applies unless a contrary intention appears and extends to waivers effected after the twenty-third day of July, eighteen hundred and sixty.

Retrospective. This s. applies to any lease or tenancy whenever created: s. 154, *inf.*

Abolition of interesse termini, and as to reversionary leases and leases for lives.

149.—(1) The doctrine of interesse termini is hereby abolished.

Presumably this means that the interests formerly called "*interesse termini*" are abolished; the material enactment is in sub-s. (2).

(2) As from the commencement of this Act all terms of years absolute shall, whether the interest is created before or after such commencement, be capable of taking

effect at law or in equity, according to the estate interest or powers of the grantor, from the date fixed for commencement of the term, without actual entry.

Under a common law assurance a lessee had no estate before entry, but merely an *interesse termini* which was assignable: Goodeve, R. P. 162; see also, as to the use of stating a nominal consideration in a demise to trustees, Elph., Intr., 7th ed. 86. Effect of common law assurances before 1926.

Before 1926 a second or subsequent mortgagee by sub-demise acquired either a legal term or an *interesse termini: Re Moore & Hulm,* 1912, 2 Ch. 105.

Before 1926 a reversionary lease (not a lease of a reversion: *Birch* v. *Wright,* 1 T. R. 378) only created an *interesse termini* until the lessee entered; hence where a tenant, holding under a lease in possession and a reversionary lease, granted a sub-lease for a term longer than the duration of the lease in possession, he could not distrain for rent during the subsistence of the lease in possession, for the reversionary lease did not confer a legal reversion: *Lewis* v. *Baker,* 1905, 1 Ch. 46. Reversionary leases before 1926.

See also as to the old law relating to an *interesse termini,* art. by the late Sir Howard Elphinstone in 1912, 56 Sol. J. 220, showing that it was a legal interest; also for a definition: *Mann, Crossman, &c.* v. *Land Registrar,* 1918, 1 Ch. 202. Old law.

The effect of the s. is to make the grant of a term take effect like an appointment under the Statute of Uses or a bargain and sale before 1926, with the result that the lessee (if the lessor was an estate owner) will acquire a legal term without entry. Effect of s.

Under s. 51, *sup.*, the same principle is applied to conveyances generally.

(3) A term, at a rent or granted in consideration of a fine, limited after the commencement of this Act to take effect more than twenty-one years from the date of the instrument purporting to create it, shall be void, and any contract made after such commencement to create such a term shall likewise be void; but this subsection does not apply to any term taking effect in equity under a settlement, or created out of an equitable interest under a settlement, or under an equitable power for mortgage, indemnity or other like purposes.

The perpetuity rule does not apply to render invalid a lease limited to take effect at a remote date: *Mann, Crossman, &c.* v. *Land Registrar,* 1918, 1 Ch. 202; hence, as reversionary leases will, after 1925, create legal terms under sub-s. (2), it was necessary, in order to prevent unnecessary complication of title, to impose a limit within which a term could be validly created to take effect *in futuro.* No harm is done by the creation of equitable terms in a settlement or will to take effect at a future date, *e.g.*, for raising portions, or under an equitable power (*e.g.*, to charge portions, or for raising money at a future date), for such a term does not come on to the title to the legal estate till the money is required to be raised, and the estate owner gives legal effect thereto either under s. 3, *sup.*, or under S. L. A., 1925, s. 16. "Fine": s. 205 (1) (xxiii), *inf.* Terms to take effect within 21 years. Portion terms, &c.

A contract made after 1925 to create a term to take effect more than twenty-one years from the date of the contract is similarly made void, otherwise such a contract could have been protected as an "estate contract" by the registration of a land charge: L. C. A., 1925, s. 10, Class C. (iv). Contract to create a term *in futuro.*

Contracts for renewal of leases.

This sub-s. must be read with L. P. A., 1922, 15th Sch., para. 7, under which a contract for the perpetual renewal of a lease operates as an agreement to grant a lease for 2,000 years: *ib.*, sub-s. (2); while a contract to renew a lease for more than sixty years is void: *ib.*, sub-s. (3). As to leases for lives and contracts therefor, see sub-s. (6), *inf.*

Notwithstanding s. 6, *sup.*, a right of renewal should be protected by the registration of a land charge: L. C. A., 1925, s. 10, Class C. (iv).

(4) Nothing in subsections (1) and (2) of this section prejudicially affects the right of any person to recover any rent or to enforce or take advantage of any covenants or conditions, or, as respects terms or interests created before the commencement of this Act, operates to vary any statutory or other obligations imposed in respect of such terms or interests.

Saving of right to recover rent, &c.

The object of this sub-s. is to secure that beneficial rights shall not be prejudicially affected; it does not prevent the owner of a legal term, which was formely an *interesse termini* and has become a legal reversion expectant on a sub-term, from distraining in right of his reversion: see *Lewis* v. *Baker*, 1905, 1 Ch. 46.

Saving of incidence of compensation under Licensing A., 1910.

In *Llangattock* v. *Watney*, 1910, A. C. 394, and *Knight* v. *City of London Brewery Co.*, 1912, 1 K. B. 10, it was held that, for the purpose of deduction from rent under the Licensing (Con.) A., 1910, 3rd Sch., the words "unexpired term" in that sch. did not apply to the lessee's interest in a reversionary lease which was a mere *interesse termini;* this sub-s. prevents any alteration being made where the lease is granted before 1926 in the amount of the compensation or the proportions in which it is to be borne by the respective persons interested.

(5) Nothing in this Act affects the rule of law that a legal term, whether or not being a mortgage term, may be created to take effect in reversion expectant on a longer term, which rule is hereby confirmed.

Sub-terms created out of a head term create legal reversions.

This sub-s. confirms the decision in *Re Moore & Hulm*, 1912, 2 Ch. 105, which showed that successive sub-terms, created out of a head term, being in each case one day shorter than the head term, took effect at law, and that the second sub-term created a reversion expectant on the first sub-term though of equal duration. This rule of law is relied on for the purposes of the 1st Sch., Pt. VIII., para. 2: see the words "and in any case for a term less by one day at least than the term assigned by the mortgage"; also *ib.*, para. 6: see the words "and in any case for a term less by one day at least than the term created by such statute." Both these paras. contemplate the possibility of the sub-terms being of equal duration. Provided that the sub-terms are of less duration than the head term out of which they are created, it is immaterial whether or not the sub-terms are of equal length.

Concurrent legal terms.

By the joint operation of this sub-s. and sub-s. (2), *sup.*, the decision in *Neale* v. *Mackenzie*, 1836, 1 M. & W. 747, is overruled. Thus there may be any number of concurrent legal terms; each subsequent term creates a reversion expectant on the term next preceding it; even if the subsequent term is of shorter duration than the term next above it, a legal reversion is created during the subsistence of the shorter term.

Reversion "of one day" a misnomer.

Where a sub-term is created for a term, say, "less by one day" than the term out of which it is created, the sub-term creates an interest wholly distinct from the head term; it is wrong to speak of the lessor having a "reversion

of one day"—he has the whole of the head term vested in him; that is his reversion.

Similarly, if he creates any number of sub-terms less by one day than his head term, the ultimate reversion (viz., the head term) remains vested in him, while each sub-lessee (except the first) acquires a legal reversion expectant on the sub-term immediately above him, while the first sub-lessee, to the extent of his term, has a reversion expectant on the head term.

In sub-demising the expression "less one day" or any other period is only a convenient method of indicating the duration of the sub-term; the same result would be obtained by sub-demising for a term in which the dates of the commencement and termination were stated.

When a deed is required.

Nothing in this s. affects the question whether or not a deed is required to create a valid term; that is governed by s. 54 (2), *sup.*; all reversionary leases, to be valid, must be by deed.

(6) Any lease or underlease, at a rent, or in consideration of a fine, for life or lives or for any term of years determinable with life or lives, or on the marriage of the lessee, or any contract therefor, made before or after the commencement of this Act, or created by virtue of Part V. of the Law of Property Act, 1922, shall take effect as a lease, underlease or contract therefor, for a term of ninety years determinable after the death or marriage (as the case may be) of the original lessee, or of the survivor of the original lessees, by at least one month's notice in writing given to determine the same on one of the quarter days applicable to the tenancy, either by the lessor or the persons deriving title under him, to the person entitled to the leasehold interest, or if no such person is in existence by affixing the same to the premises, or by the lessee or other persons in whom the leasehold interest is vested to the lessor or the persons deriving title under him:

This sub-s., with the proviso, *inf.*, reproduces L. P. A., 1922, 15th Sch., para. 7 (3).

Contracts.

As to notices: s. 196, *inf.* A contract for a lease within this sub-s. will be construed as a contract to grant a lease for ninety years terminable by notice.

Leases for lives at a rent converted into terms of years absolute, terminable by notice.

This sub-s. abolishes leases for lives, or leases determinable by reference to lives or on marriage, and converts such leases into terms of ninety years, determinable upon notice, by either side, after any of the events upon which such lease would, but for this Act, have been determinable; thus these interests become legal estates.

Copyholds for life.

"Created by virtue of Part V. of the L. P. A., 1922": this refers to the conversion of copyholds for life, without a right of perpetual renewal, into leasehold terms of ninety years with the aid of this sub-s.: see L. P. A., 1922, s. 133. Sub-s. (3) referred to the L. P. A., 1922, 15th Sch., para. 7 (3) (originally part of Pt. VII. of that Act), which is now replaced by this sub-s.

When conversion is deemed to have been effected.

For giving effect to this Act, the conversion of leases for life, &c. into terms of ninety years is deemed to have been effected immediately before 1926: s. 202, *inf.*

Provided that—

(a) this subsection shall not apply to any term taking effect in equity under a settlement or created out of an equitable interest under a settlement for mortgage, indemnity, or other like purposes;

(b) the person in whom the leasehold interest is vested by virtue of Part V. of the Law of Property Act, 1922, shall, for the purposes of this subsection, be deemed an original lessee;

(c) if the lease, underlease, or contract therefor is made determinable on the dropping of the lives of persons other than or besides the lessees, then the notice shall be capable of being served after the death of any person or of the survivor of any persons (whether or not including the lessees) on the cesser of whose life or lives the lease, underlease, or contract is made determinable, instead of after the death of the original lessee or of the survivor of the original lessees;

(d) if there are no quarter days specially applicable to the tenancy, notice may be given to determine the tenancy on one of the usual quarter days.

Terms under settlements.

Terms created by or under powers contained in settlements for family purposes are outside the mischief aimed at by this sub-s.; they do not come on the title to legal estates; for definition of "settlement": s. 205 (1) (xxvi).

Person to take under L. P. A. 1922.

The person who under L. P. A., 1922, s. 133, takes a leasehold interest in place of a customary interest is treated as the "original" lessee in connexion with the foregoing provision as to notice. The ninety years' term will, under the 1st Sch., *inf.*, vest in the person entitled thereto; he will be the "original" lessee. The 1st Sch., *inf.*, takes the place of the vesting provisions of the L. P. A., 1922, though the 12th Sch. to that Act, as amended, is also material in regard to the vesting of enfranchised land.

Notices.

Paras. (c) and (d) deal with special cases in regard to the time when the ninety years' term becomes terminable by notice, so as to give effect to beneficial rights subsisting before 1926.

Surrender of a lease, without prejudice to underleases with a view to the grant of a new lease.

150.—(1) A lease may be surrendered with a view to the acceptance of a new lease in place thereof, without a surrender of any underlease derived thereout.

This s. reproduces the Landlord and Tenant A., 1730, s. 6.

The object of the s. is to place parties, as nearly as may be, in the same position as if no surrender had taken place: *per* Lord Tenterden, in *Doe d. Palk* v. *Marchetti*, 1 B. & Ad. 715.

(2) A new lease may be granted and accepted, in place of any lease so surrendered, without any such

surrender of an underlease as aforesaid, and the new lease operates as if all underleases derived out of the surrendered lease had been surrendered before the surrender of that lease was effected.

This sub-s. merely validates the new lease as between the head lessor and his lessee; their rights *inter se* are governed by the new lease as if there had been no underleases.

Rights of head lessor and lessee *inter se*.

(3) The lessee under the new lease and any person deriving title under him is entitled to the same rights and remedies in respect of the rent reserved by and the covenants, agreements and conditions contained in any underlease as if the original lease had not been surrendered but remained vested in him.

This preserves the rights of the head lessee as against the underlessees; it does not impose any additional liability on an underlessee.

Rights of head lessee against his underlessees.

(4) Each underlessee and any person deriving title under him is entitled to hold and enjoy the land comprised in his underlease (subject to the payment of any rent reserved by and to the observance of the covenants agreements and conditions contained in the underlease) as if the lease out of which the underlease was derived had not been surrendered.

This sub-s. merely maintains the rights of the underlessees, provided that they comply with the obligations imposed by the underleases.

Rights of underlessees.

(5) The lessor granting the new lease and any person deriving title under him is entitled to the same remedies, by distress or entry in and upon the land comprised in any such underlease for rent reserved by or for breach of any covenant, agreement or condition contained in the new lease (so far only as the rents reserved by or the covenants, agreements or conditions contained in the new lease do not exceed or impose greater burdens than those reserved by or contained in the original lease out of which the underlease is derived) as he would have had—

(a) If the original lease had remained on foot; or

(b) If a new underlease derived out of the new lease had been granted to the underlessee or a person deriving title under him,

as the case may require.

The rights of the head lessor are *primâ facie* against the head lessee: sub-s. (2), *sup.*; but if the new head lease is forfeited, then, for the purposes

Rights of head lessor as against underlessees.

of s. 146 (4), *sup.*, the head lessor, as respects the underlessees, is in effect relegated to the same position as if it were the original lease that was forfeited; the rights of the underlessees are thus maintained: para. (a), *sup.*

Though as between the head lessor and his lessee the rights are governed by the new lease (when para. (b) would apply), this must not affect the underlessees who were not parties to the surrender of the original lease.

When enforceable.

This sub-s. removes the doubt raised in *Doe* d. *Palk* v. *Marchetti*, 1 B. & Ad. 715, whether the head lessor could in effect enforce special covenants in the new lease as against the underlessees; the test will be whether or not they correspond with those in the original lease. If they do not impose greater burdens, then they can be enforced.

(6) This section does not affect the powers of the court to give relief against forfeiture.

Relief against forfeiture.

As to these powers, see ss. 146, 147, *sup.*, and notes thereto.

Provision as to attornments by tenants.

151.—(1) Where land is subject to a lease—

(a) the conveyance of a reversion in the land expectant on the determination of the lease; or

(b) the creation or conveyance of a rentcharge to issue or issuing out of the land;

shall be valid without any attornment of the lessee:

Nothing in this subsection—

(i) affects the validity of any payment of rent by the lessee to the person making the conveyance or grant before notice of the conveyance or grant is given to him by the person entitled thereunder; or

(ii) renders the lessee liable for any breach of covenant to pay rent, on account of his failure to pay rent to the person entitled under the conveyance or grant before such notice is given to the lessee.

This s. replaces 4 & 5 Anne, c. 3, ss. 9 and 10, as amended by the Distress for Rent A., 1737, s. 11 (11 Geo. 2, c. 19, s. 11).

No attornment necessary where "possession" is transferred.

Independently of this s., no attornment is necessary where "possession" is transferred under the "conveyance" (s. 205 (1) (ii)) by virtue of ss. 51 (1) or 149 (2), *sup.*, any more than an attornment was ever necessary when the "possession" was transferred by an appointment operating under the Statute of Uses or a right of entry was transferred by a devise or bequest under Wills A., 1837, s. 3. After 1925, rights of entry devolve on the personal representatives: Ad. of E. A., 1925, ss. 3 and 25; and will pass under an assent in writing, which is a form of conveyance: *ib.*, s. 36.

See generally as to attornments: Woodfall, 21st ed., 328-32.

(2) An attornment by the lessee in respect of any land to a person claiming to be entitled to the interest

in the land of the lessor, if made without the consent of the lessor, shall be void.

This subsection does not apply to an attornment—

(a) made pursuant to a judgment of a court of competent jurisdiction; or

(b) to a mortgagee, by a lessee holding under a lease from the mortgagor where the right of redemption is barred; or

(c) to any other person rightfully deriving title under the lessor.

Attornments to strangers.

Thus, attornments to strangers without the consent of the lessor are void, save when made under an order of the court. It would not be right for the lessee to be able to prejudice his lessor's title, but there is no objection to the lessee attorning to a person rightfully deriving title under the lessor as in paras. (b) and (c).

As to a mortgagor in possession attorning to his mortgagee: Woodfall, 21st ed., 289-94.

Leases invalidated by reason of non-compliance with terms of powers under which they are granted.

152.—(1) Where in the intended exercise of any power of leasing, whether conferred by an Act of Parliament or any other instrument, a lease (in this section referred to as an invalid lease) is granted, which by reason of any failure to comply with the terms of the power is invalid, then—

(a) as against the person entitled after the determination of the interest of the grantor to the reversion; or

(b) as against any other person who, subject to any lease properly granted under the power, would have been entitled to the land comprised in the lease;

the lease, if it was made in good faith, and the lessee has entered thereunder, shall take effect in equity as a contract for the grant, at the request of the lessee, of a valid lease under the power, of like effect as the invalid lease, subject to such variations as may be necessary in order to comply with the terms of the power:

Provided that a lessee under an invalid lease shall not, by virtue of any such implied contract, be entitled to obtain a variation of the lease if the other persons who would have been bound by the contract are willing and able to confirm the lease without variation.

This s. replaces the Leases As., 1849 and 1850. 12 & 13 Vict. c. 26, amended by *ib.* c. 110, 13 & 14 Vict. c. 17.

This sub-s. merely makes the invalid lease operate as a contract to grant a lease with such variations as may be requisite to comply with the power.

Only applicable to leases in possession.

As the lessee *ex hypothesi* takes possession, his rights may be protected under s. 14, *sup.*, but till the lease is confirmed it operates as an "estate contract," and should be protected by the registration of a land charge: L. C. A., 1925, s. 10, Class C.

Statutory leasing powers.

In view of the wide powers to grant leases conferred by the S. L. A., 1925, on tenants for life, statutory owners, limited owners, absolute owners subject to equitable interests, and on the trustees of the settlement in case there is no tenant for life of full age, which powers are also exercisable by trustees for sale and by personal representatives, this s. has ceased to be of any great importance.

See on this s. generally: Woodfall, 21st ed., 251-60.

(2) Where a lease granted in the intended exercise of such a power is invalid by reason of the grantor not having power to grant the lease at the date thereof, but the grantor's interest in the land comprised therein continues after the time when he might, in the exercise of the power, have properly granted a lease in the like terms, the lease shall take effect as a valid lease in like manner as if it had been granted at that time.

Confirmation by rectification of lessor's title.

This is an extension of the principle of confirmation by estoppel; thus, just as a lease by a person who has a mere contractual right to the property is legally confirmed when he obtains a proper conveyance, so, under this sub-s., the lease is confirmed if the grantor during the subsistence of his interest acquires the requisite power.

Powers after 1925 rest on legal estates.

But under leasing powers, divorced from a legal estate, only equitable terms can be created after 1925: s. 1 (7); save in the case of the powers conferred on legal mortgagees or their receivers by s. 99, *sup.*, and subject to the exceptions provided for in s. 8, *sup.* Under that s. leases should be granted in the name of the estate owner.

(3) Where during the continuance of the possession taken under an invalid lease the person for the time being entitled, subject to such possession, to the land comprised therein or to the rents and profits thereof, is able to confirm the lease without variation, the lessee, or other person who would have been bound by the lease had it been valid, shall, at the request of the person so able to confirm the lease, be bound to accept a confirmation thereof, and thereupon the lease shall have effect and be deemed to have had effect as a valid lease from the grant thereof.

Confirmation under this subsection may be by a memorandum in writing signed by or on behalf of the persons respectively confirming and accepting the confirmation of the lease.

Lessees bound to accept confirmation by memorandum.

As under sub-s. (1) the lease takes effect as a contract to grant a valid lease, so under this sub-s. the lessee is bound to accept confirmation without variation.

If the lessor is able to confirm without variation, then under sub-s. (1) he is entitled to hold the lessee to the original bargain.

(4) Where a receipt or a memorandum in writing confirming an invalid lease is, upon or before the acceptance of rent thereunder, signed by or on behalf of the person accepting the rent, that acceptance shall, as against that person, be deemed to be a confirmation of the lease.

Confirmation by acceptance of rent.

This sub-s. only binds the interest of the person who accepts the rent; the lease is not confirmed in all respects.

The sub-s. does not operate unless either a receipt in writing is given when the rent is paid, or a confirmatory memorandum is signed before the rent is accepted.

(5) The foregoing provisions of this section do not affect prejudicially—

(a) any right of action or other right or remedy to which, but for those provisions or any enactment replaced by those provisions, the lessee named in an invalid lease would or might have been entitled under any covenant on the part of the grantor for title or quiet enjoyment contained therein or implied thereby; or

(b) any right of re-entry or other right or remedy to which, but for those provisions or any enactment replaced thereby, the grantor or other person for the time being entitled to the reversion expectant on the termination of the lease, would or might have been entitled by reason of any breach of the covenants, conditions or provisions contained in the lease and binding on the lessee.

Savings.

The rights conferred by the s. thus operate without prejudice to the lessee's contractual rights, and to the rights which the lessor would have had if the lease had been validly granted.

(6) Where a valid power of leasing is vested in or may be exercised by a person who grants a lease which, by reason of the determination of the interest of the grantor or otherwise, cannot have effect and continuance according to the terms thereof independently of the power, the lease shall for the purposes of this section be deemed to have been granted in the intended exercise

of the power although the power is not referred to in the lease.

Leasing powers not generally referred to when exercised.

Relying on this sub-s. it has not been the practice to refer to leasing powers when such a power is exercised.

(7) This section does not apply to a lease of land held on charitable, ecclesiastical or public trusts.

Land held on charitable, ecclesiastical or public trusts.

Though under S. L. A., 1925, s. 29, the managing trustees of land held for charitable, ecclesiastical or public purposes are given the statutory powers of a tenant for life, those powers are only exercisable subject to the requisite consents or orders, if any, being attained; hence, an intending lessee must, for instance, where the lease is to be granted at a nominal rent, or for less than the best rent that can be reasonably obtained, or gratuitously, see that the requisite order or consent has been given by the proper authority.

(8) This section takes effect without prejudice to the provision in this Act for the grant of leases in the name and on behalf of the estate owner of the land affected.

Leases in name of estate owner.

As to this provision: s. 8, *sup.*

Enlargement of residue of long terms into fee simple estates.

153.—(1) Where a residue unexpired of not less than two hundred years of a term, which, as originally created, was for not less than three hundred years, is subsisting in land, whether being the whole land originally comprised in the term, or part only thereof,—

(a) without any trust or right of redemption affecting the term in favour of the freeholder, or other person entitled in reversion expectant on the term; and

(b) without any rent, or with merely a peppercorn rent or other rent having no money value, incident to the reversion, or having had a rent, not being merely a peppercorn rent or other rent having no money value, originally so incident, which subsequently has been released or has become barred by lapse of time, or has in any other way ceased to be payable,

the term may be enlarged into a fee simple in the manner, and subject to the restrictions in this section provided.

This s. replaces C. A., 1881, s. 65, as amended by C. A., 1882, s. 11, with further amendments.

Application of s.

This s. does not apply to a lease for a term of three hundred years where the term commences from a date prior to the date of the execution of the lease: *Re Stewart & Hooles,* Reg. Lib., 1898, S. No. 4400; and see *Shaw* v. *Kay,* 1847, 1 Exch. 412.

"Barred by lapse of time."

The R. P. Limitation A., 1833, s. 2 (now replaced by the R. P. Limitation A., 1874, s. 1), does not apply to rent reserved on a lease: *Grant* v. *Ellis*, 1841, 9 M. & W. 113; Sugden, Real Prop. Stat., 2nd ed., 36, 63; and see *Irish Land Commission* v. *Grant*, 1884, 10 A. C. 14, 26; but under sub-ss. (4) and (5), *inf.*, rent not exceeding the yearly sum of one pound, which has not been paid for a continuous period of twenty years or more, is unenforceable and will be deemed to have ceased to be payable after five years from the 1st of January, 1926.

Condition as to release of rent.

Independently of the provisions of sub-ss. (4) and (5), *inf.*, on a sale a purchaser may be bound by a condition to assume that a rent which has not been paid for a long time has been released, and that a deed of enlargement under this s. was effectual according to its tenor. If a freehold title is established with the help of these assumptions the description of the property as freehold in the particulars is justified: *Blaiberg* v. *Keeves*, 1906, 2 Ch. 175; *semble*, apart from any condition a rent might be presumed to have been released after non-payment for a long period: *S. C.*

Presumption of release.

"No money value."

A rent which, when received, has a money value, as a rent of three shillings, though it be not regularly paid, is not within this sub-s.: *Re Smith & Stott*, 1883, 29 Ch. D. 1009, n.; *secus*, as to a rent of one silver penny if lawfully demanded: *Re Chapman & Hobbs*, 1885, *ib.* 1007. In *Blaiberg* v. *Keeves*, *sup.*, a rent of one shilling was assumed to have a money value.

(2) This section applies to and includes every such term as aforesaid whenever created, whether or not having the freehold as the immediate reversion thereon; but does not apply to—

(i) any term liable to be determined by re-entry for condition broken; or

(ii) any term created by sub-demise out of a superior term, itself incapable of being enlarged into fee simple.

This sub-s. replaces C. A., 1882, s. 11.

What terms cannot be enlarged.

It follows that if A. having a lease for 999 years at a substantial rent demised to B. for 500 years without rent, taking a fine, then neither A. nor B. under this s. could acquire the fee. The result would be the same if the lease for 999 years be not at a rent, but be liable to be determined by re-entry for condition broken. But if neither the lease nor the sub-lease be at a rent, nor be liable to be determined by re-entry for condition broken, then B. could acquire the fee, notwithstanding that his immediate reversion is not the freehold, and could thus defeat A.'s term. A. could also acquire the fee as being entitled to possession, which includes receipt of rents and profits, if any (s. 205 (1) (xix)), in right of his term, but having done so would be liable to have his estate defeated by the enlargement of B.'s term.

Defeasible fee.

As to defeasible fees: s. 7 (1), *sup.*

(3) This section extends to mortgage terms, where the right of redemption is barred.

Enlargement of mortgage terms.

As to the enlargement of mortgage terms where the right of redemption is barred by lapse of time, see s. 88 (3).

(4) A rent not exceeding the yearly sum of one pound which has not been collected or paid for a continuous period of twenty years or upwards shall, for the purposes of this section, be deemed to have ceased to be payable:

Provided that, of the said period, at least five years must have elapsed after the commencement of this Act.

Rent, when deemed to have ceased.

This and the next sub-s. are new, and provide a substitute for the Limitation Acts which do not apply to rent reserved by a lease: see note to sub-s. (1), *sup.*

Rents to be collected between 1925—31.

Thus, reversioners entitled subject to long terms, who have allowed small rents to remain uncollected, should see that some payment is made before 1931.

(5) Where a rent incident to a reversion expectant on a term to which this section applies is deemed to have ceased to be payable for the purposes aforesaid, no claim for such rent or for any arrears thereof shall be capable of being enforced.

Barring of rent.

This sub-s. bars the right to claim a rent coming within the last sub-s.

(6) Each of the following persons, namely:—

(i) Any person beneficially entitled in right of the term, whether subject to any incumbrance or not, to possession of any land comprised in the term, and, in the case of a married woman without the concurrence of her husband, whether or not she is entitled for her separate use or as her separate property, or is subject to a restraint on anticipation;

(ii) Any person being in receipt of income as trustee, in right of the term, or having the term vested in him in trust for sale, whether subject to any incumbrance or not;

(iii) Any person in whom, as personal representative of any deceased person, the term is vested, whether subject to any incumbrance or not;

shall, so far as regards the land to which he is entitled, or in which he is interested in right of the term, in any such character as aforesaid, have power by deed to declare to the effect that, from and after the execution of the deed, the term shall be enlarged into a fee simple.

Persons entitled to enlarge terms.

This sub-s. replaces C. A., 1881, s. 65 (2), and amends para. (i) to enable a married woman, whenever she married or became entitled, to act for the purposes of this s. without her husband.

Para. (ii) includes all tenants for life and statutory owners who after 1925 will have all leaseholds subject to the settlement vested in them as trustees; indeed a tenant for life beneficially entitled also comes within para. (i), though a statutory owner (*e.g.*, the trustees of the settlement during a minority) would only be within para. (ii).

Tenant for life the trustee of settled land.

(7) Thereupon, by virtue of the deed and of this Act, the term shall become and be enlarged accordingly, and the person in whom the term was previously vested shall acquire and have in the land a fee simple instead of the term.

This s. enables the conversion into a fee simple of a long term in a case where it is practically impossible that evidence of title to the reversion in fee could exist at the expiration of the term, at least where the reversion is not vested in a corporation, and where also if such evidence did exist the value of the reversion must be infinitesimally small at the time of conversion.

S. applies to cases where reversion has no appreciable value.

Before the R. P. A., 1845, a tortious fee, and for all practical purposes an actual fee, could be acquired by means of a feoffment: see 1 Sand. Uses, 5th ed., 30; 2 *ib.* 14 *et seq.*; *Weller* v. *Stone*, 1885, 54 L. J. Ch. 497. But s. 4 of that Act took away the tortious effect of a feoffment, and rendered impossible the acquisition of a fee in place of a term. The usual origin of a long term is a mortgage by demise where the right of redemption has been foreclosed or has been barred by possession and lapse of time. The fact that the land is not freehold is often overlooked, complication of title arises, and the intentions of a testator are sometimes frustrated, the leasehold interest passing under a gift not intended to include it.

Old mode of acquiring fee.

The power to convert into a fee is given to "any person beneficially entitled" "to possession" (see definition of "possession," s. 205 (1) (xix), *inf.*). Thus a tenant for life, whether the land is "subject to any incumbrance or not," can effect the conversion. A trustee can only convert where the trust is active and he is in receipt of rent. Otherwise the beneficial owner is the person to convert. Thus all trustees for sale will be the proper persons to effect a conversion.

Who has power to convert.

Trustee.

Save for the purposes of s. 88 (3), a mortgagee cannot convert, as it would be improper to allow him to change the nature of his mortgagor's estate. But the mortgagor can convert, the conversion being no injury to the mortgagee.

Mortgagor but not mortgagee.

The effect of sub-s. (7) is to defeat the reversion in fee in the same way as on a disentail, so that the fee acquired by conversion is free from all dealings affecting the original fee.

Effect of conversion.

(8) The estate in fee simple so acquired by enlargement shall be subject to all the same trusts, powers, executory limitations over, rights, and equities, and to all the same covenants and provisions relating to user and enjoyment, and to all the same obligations of every kind, as the term would have been subject to if it had not been so enlarged.

As to utilising this sub-s. for the purpose of attaching covenants to the fee simple, see K. & E., 11th ed., vol. i., p. 385; Challis, R. P., 3rd ed., p. 334.

Maintenance of title.

(9) But where—

(a) any land so held for the residue of a term has been settled in trust by reference to other land, being freehold land, so as to go along with that other land, or, in the case of settlements coming into operation before the commencement of this Act, so as to go along with that other land as far as the law permits; and

(b) at the time of enlargement, the ultimate beneficial interest in the term, whether subject to any subsisting particular estate or not, has not become absolutely and indefeasibly vested in any person, free from charges or powers of charging created by a settlement;

the estate in fee simple acquired as aforesaid shall, without prejudice to any conveyance for value previously made by a person having a contingent or defeasible interest in the term, be liable to be, and shall be, conveyed by means of a subsidiary vesting instrument and settled in like manner as the other land, being freehold land, aforesaid, and until so conveyed and settled shall devolve beneficially as if it had been so conveyed and settled.

Fee simple, when to be settled.

This sub-s. replaces the C. A., 1881, s. 65 (5), with amendments.

After 1925, it will be possible to settle leaseholds in exactly the same way as freeholds, in view of the power to create entailed interests conferred by s. 130, *sup.*

Mode of settling.

All freeholds and leaseholds when acquired with capital money must be vested in the tenant for life of full age by a subsidiary vesting instrument: S. L. A., 1925, s. 10; this sub-s. brings that s- into play as if the fee had been acquired with capital money.

Without prejudice to any conveyance for value, &c.

Only beneficial interests acquired for value, &c. in the term before its conversion will be protected: see Wolst., 10th ed., p. 139, for note on the old law; in other respects the beneficial interests are treated as if the land had always been freehold. It makes no difference to the form of the subsidiary vesting deed; the estate owner, in whom the fee simple is vested, will have to give effect to the beneficial interests whatever they are.

(10) The estate in fee simple so acquired shall, whether the term was originally created without impeachment of waste or not, include the fee simple in all mines and minerals which at the time of enlargement have not been severed in right or in fact, or have not been severed or reserved by an inclosure Act or award.

Minerals acquired subject to exceptions.

This sub-s. in effect gives to the owner of a fee simple obtained by enlargement the right to the mines in fee simple as well as the land, except in those

cases where there is a possibility that the mines can be shown to be vested in some other person than the reversioner in fee.

Mines severed in right (as by conveyance separately from the land) will also be severed in fact, but the words "in fact" seem also required to save the title of a person in possession of mines without obliging him to show that they have been severed in right.

To what terms the s. applies.

There was an express declaration in C. A., 1881, s. 65, that the s. applied to terms subsisting at or after 1882; this is no longer necessary: see next s.

Application of Part V. to existing leases.

154. This Part of this Act, except where otherwise expressly provided, applies to leases created before or after the commencement of this Act, and "lease" includes an underlease or other tenancy.

Definition of "lease."

In s. 205 (1) (xxiii), "lease" is defined, "unless the context otherwise requires," as including an underlease or other tenancy.

This s. was added first to make it clear that there was nothing in Pt. V. to prevent "lease" being construed as including an underlease or other tenancy.

Secondly, to avoid having to state after each s. that it applied to leases made before or after the Act.

Part VI.

Powers.

Release of powers simply collateral.

155. A person to whom any power, whether coupled with an interest or not, is given may by deed release, or contract not to exercise, the power.

This s. replaces C. A., 1881, s. 52; it applies whenever the power was created: s. 160.

Married women.

Under that s. a married woman, though married before 1883, could release a power by deed unacknowledged: *Re Chisholm's Settlement,* 1901, 2 Ch. 82; after 1925 no deed will be acknowledged: s. 167.

This s. removes the difficulty which arose from the indestructibility of powers simply collateral, that is, powers given to a person, not taking any estate, to dispose of or charge the estate in favour of some other person (see Sug. Powers, 8th ed. 49). But a power coupled with a duty cannot be released: *Re Eyre,* 1883, 49 L. T. 259; *Weller* v. *Ker,* 1866, L. R. 1 Sc. App. 11; *Saul* v. *Pattinson,* 1886, 55 L. J. Ch. 831.

Power coupled with a duty.

The ordinary power of appointment among children or issue, given to a tenant for life in a settlement, is not such a power coupled with a duty; the donee of the power, entitled in reversion on his own life interest to a child's share in default of appointment, can release the power, and, on surrendering his life interest, call for transfer of the share: *Re Radcliffe,* 1892, 1 Ch. 227; *Re Somes,* 1896, 1 Ch. 250; *semble,* his trustee in bankruptcy cannot release the power for the benefit of the estate: *Re Rose,* 1904, 2 Ch. 348; 1905, 1 Ch. 94.

Release made for benefit of donee of power, is not a "fraud."

A release of, or covenant not to exercise, such a power of appointment among children or issue, is not open to objection, though the object or effect is to benefit the donee himself: *Smith* v. *Houblon,* 1859, 26 Beav. 482; *Re Little,* 1889, 40 Ch. D. 418; *Re Radcliffe, sup.; Re Somes, sup.;* Farwell, 3rd ed., 495—497; *secus,* a power of revocation cannot be exercised for the benefit of the donee: *Re Jones,* 1915, 1 Ch. 373; but it could be released.

Power of revocation.

As to the effect of a negative covenant or agreement in restricting the exercise of such a power, see *Re Evered*, 1910, 2 Ch. 147; *Re Sugden*, 1917, 2 Ch. 92.

Disclaimer of powers.

As to disclaimer of powers, see s. 156, *inf.*

Disclaimer of powers.

156.—(1) A person to whom any power, whether coupled with an interest or not, is given may by deed disclaim the power, and, after disclaimer, shall not be capable of exercising or joining in the exercise of the power.

(2) On such disclaimer, the power may be exercised by the other person or persons or the survivor or survivors of the other persons, to whom the power is given, unless the contrary is expressed in the instrument creating the power.

This s. replaces C. A., 1882, s. 6; it applies whenever the power was created: s. 160.

Disclaimer and release of powers.

S. 155, *sup.*, enables the release of a power whether coupled with an interest or not (unless it is coupled with a duty), thereby extinguishing it, so that several trustees concurring can absolutely preclude themselves from ever exercising the power, but it does not enable one trustee alone to disclaim as he could disclaim a trust estate, so as to vest the power in the other trustees. This s. puts disclaimer of a power on the same footing as disclaimer of an estate: see Sugd. Powers, 8th ed., 50; *Re Fisher & Haslett*, 1884, 13 L. R. Ir. 546. A trustee cannot disclaim a power, coupled with a duty, so as to vest it in his co-trustees, while he continues a trustee for other purposes: *Re Eyre*, 1883, 49 L. T. 259; and see *Saul* v. *Pattinson*, 1886, 34 W. R. 561; *Re Lord & Fullerton*, 1896, 1 Ch. 228.

Semble, this s. applies to the case of the joint powers given to husband and wife in an ordinary marriage settlement, so that one could disclaim leaving it to the other to exercise the powers alone, unless it were held that they, as parties to the settlement, have accepted the powers, and so cannot disclaim: *cf. Burnaby* v. *Baillie*, 1889, 42 Ch. D. 282, 301. If a person executes the settlement, he cannot disclaim.

S. L. A. powers.

As to disclaimer of powers under the S. L. A., 1925, see *ib.*, s. 104, note.

Protection of purchasers claiming under certain void appointments.

157.—(1) An instrument purporting to exercise a power of appointment over property, which, in default of and subject to any appointment, is held in trust for a class or number of persons of whom the appointee is one, shall not (save as hereinafter provided) be void on the ground of fraud on the power as against a purchaser in good faith:

Provided that, if the interest appointed exceeds, in amount or value, the interest in such property to which immediately before the execution of the instrument the appointee was presumptively entitled under the trust in default of appointment, having regard to any advances made in his favour and to any hotchpot provision, the

protection afforded by this section to a purchaser shall not extend to such excess.

Restriction on doctrine of frauds on a power.

This s. is new. As to frauds on powers, see *Cloutte* v. *Storey*, 1911, 1 Ch. 18 (a legal appointment is no longer available); Farwell, 3rd ed., 457—497.

"Appointee": the appointee must be not less than twenty-five years old at the date of dealing with his appointed interest: sub-s. (2), *inf.*

"Save as hereinafter provided": see next proviso.

"Purchaser in good faith": sub-s. (2), *inf.*

(2) In this section "a purchaser in good faith" means a person dealing with an appointee of the age of not less than twenty-five years for valuable consideration in money or money's worth, and without notice of the fraud, or of any circumstances from which, if reasonable inquiries had been made, the fraud might have been discovered.

"Purchaser in good faith."

The appointee should be not less than twenty-five years of age at the time of the dealing: but need not be that age at the time of the appointment.

Notice of fraud.

The fact that in a short time after the appointment a mortgage is made in favour of the appointor, is a circumstance rendering inquiry necessary: *Jackson* v. *J.*, 1840, 7 Cl. & Fin. 977.

The appointment will be of an equitable interest; hence constructive notice of the fraud is sufficient: Farwell, 3rd ed., 485; see also s. 199, *inf.*

Inquiries.

"If reasonable inquiries had been made": thus the same care must be taken in investigating the title as before 1926.

(3) Persons deriving title under any purchaser entitled to the benefit of this section shall be entitled to the like benefit.

Persons deriving title under a purchaser protected.

The purchaser will thus be able to confer a good title, notwithstanding that the persons deriving title under him may have notice of circumstances from which fraud might have been discovered; the title depends on the circumstances at the time of completion.

(4) This section applies only to dealings effected after the commencement of this Act.

Not retrospective.

Though this s. does not affect dealings before 1926, it is immaterial when the appointment was made; it applies whenever the power was created: s. 160.

Validation of appointments where objects are excluded or take illusory shares.

158.—(1) No appointment made in exercise of any power to appoint any property among two or more objects shall be invalid on the ground that—

(a) an unsubstantial, illusory, or nominal share only is appointed to or left unappointed to devolve upon any one or more of the objects of the power; or

(b) any object of the power is thereby altogether excluded;

but every such appointment shall be valid notwithstanding that any one or more of the objects is not thereby, or in default of appointment, to take any share in the property.

This s. reproduces the Illusory Appointments A., 1830, and the Powers of Appointment A., 1874, but extends the principle to appointments whenever made.

For the old law, see Sugden, Powers, 8th ed., 938; Farwell, 3rd ed., 424 *et seq.*

The s. relieves the donee of a non-exclusive power from the necessity of making any appointment to every object, or of leaving something unappointed, unless the power itself prescribes the minimum share of an appointee: *Re Capon,* 1878, 10 Ch. D. 484 (appointment to survivors).

Construction. This s. does not alter any rule of construction as to the meaning of powers, or affect the class of objects to take. Thus, a non-exclusive power to appoint to "relations" of the donee is construed, in order to avoid uncertainty, as authorising appointments to the persons who would be entitled on intestacy to the personal estate of the donee: *Re Deakin,* 1894, 3 Ch. 565.

(2) This section does not affect any provision in the instrument creating the power which declares the amount of any share from which any object of the power is not to be excluded.

Minimum share. Thus, if the minimum is 100*l.*, and there are five persons entitled in default of appointment, the fund being worth more than 500*l.*, then, if the donee purports to appoint the fund in equal shares to four of the objects, who would take in default, first, 100*l.* would be paid to the excluded object, while the balance would be divisible equally between the appointees; it is merely a case of an excessive appointment: Farwell, 3rd ed., 364 *et seq.*

(3) This section applies to appointments made before or after the commencement of this Act.

Extent of s. This sub-s. is new; for the Illusory Appointments A., 1830, and Powers of Appointment A., 1874, only applied to appointments made after the passing of those Acts respectively, whether the power was created before or after those Acts: *Moynan* v. *M.,* 1867, 1 L. R. Ir. 382; *Reid* v. *R.,* 1858, 25 Beav. 469, 480; but for practical purposes no change in the law is made.

This s. applies to powers created before or after 1925: s. 160, *inf.*

Execution of powers not testamentary.

159.—(1) A deed executed in the presence of and attested by two or more witnesses (in the manner in which deeds are ordinarily executed and attested) is so far as respects the execution and attestation thereof, a valid execution of a power of appointment by deed or by any instrument in writing, not testamentary, notwithstanding that it is expressly required that a deed or

instrument in writing, made in exercise of the power, is to be executed or attested with some additional or other form of execution or attestation or solemnity.

Deeds attested by two witnesses.

This s. replaces L. P. (Amend.) A., 1859, s. 12; it only supplies an alternative to the "form of execution, attestation or solemnity."

"Ordinarily executed": deeds must now be signed as well as sealed: s. 73, *sup.*

Execution by will.

As to the execution of powers by will, see Wills A., 1837, s. 10; Farwell, 3rd ed., pp. 243 *et seq.; Re Jarrett,* 1919, 1 Ch. 366; *Re Young,* 1920, 2 Ch. 427; as to soldiers' and sailors' wills, Wills (Soldiers and Sailors) A., 1918; *Re Wernher,* 1918, 2 Ch. 82; and as to exercise by a foreign will, *Re Wilkinson,* 1917, 1 Ch. 620; *Re Lewal,* 1918, 2 Ch. 391; *Re Strong,* 1925, W. N. 176.

(2) This section does not operate to defeat any direction in the instrument creating the power that—

(a) the consent of any particular person is to be necessary to a valid execution;

(b) in order to give validity to any appointment, any act is to be performed having no relation to the mode of executing and attesting the instrument.

Consent to execution of power.

The consent must as a rule be given during the lifetime of the donee of the power: *Hawkins* v. *Kemp,* 1803, 3 East, 410; *Wiles* v. *Gresham,* 1854, 2 Drew. 258; Farwell, 3rd ed., 159.

(3) This section does not prevent the donee of a power from executing it in accordance with the power by writing, or otherwise than by an instrument executed and attested as a deed; and where a power is so executed this section does not apply.

Execution by writing.

Unless the appointment is made by deed attested by two witnesses, the requirements of the instrument creating the power must be strictly observed: Farwell, 3rd ed., 197 *et seq.*

(4) This section applies to appointments by deed made after the thirteenth day of August, eighteen hundred and fifty-nine.

Extent of s.

It applies to powers whenever created: s. 160.

As to execution of powers generally: Farwell, 3rd ed., ch. v.

160. This Part of this Act applies to powers created or arising either before or after the commencement of this Act.

Application of Part VI. to existing powers.

Part VII.

Perpetuities and Accumulations.

Perpetuities.

Abolition of the double possibility rule.

161.—(1) The rule of law prohibiting the limitation, after a life interest to an unborn person, of an interest in land to the unborn child or other issue of an unborn person is hereby abolished, but without prejudice to any other rule relating to perpetuities.

Object of s.

This s. is new; the object is to assimilate the law of real and personal estate, by leaving one perpetuity rule applicable to both.

Rule in *Whitby* v. *Mitchell.*

It abolishes, as respects limitations and trusts, affecting land, created by an instrument coming into operation after 1925 (sub-s. (2)), the rule generally known as the rule in *Whitby* v. *Mitchell,* 1890, 44 Ch. D. 85; though the rule may have been older than that case: *Re Nash,* 1910, 1 Ch. 1.

Double possibilities.

As to the rule against a double possibility or "a possibility upon a possibility," of which this may have been the remains, see the *Rector of Chedington's Case,* 1598, 1 Co. Rep. 153a, 156b; *Cholmley's Case,* 1597, 2 Co. Rep. 50a, 51b; *Duke of Norfolk's Case,* 1685, 3 Cas. in Ch. 1, 29; *Chapman* v. *Brown,* 1765, 3 Burr. 1626, 1635; *Egerton* v. *Earl Brownlow,* 1853, 4 H. L. Cas. 1, 76, 95, 122, 205; Gray, Rule against Perpetuities, 3rd ed., paras. 126—133.

Rule inapplicable to personalty.

"Land": s. 205 (1) (ix); the rule applied to real estate, including copyholds: *Re Clarke,* 1916, 1 Ch. 467; it did not apply to trusts of personal estate: *Re Bowles,* 1902, 2 Ch. 650.

"Issue of an unborn person."

The s. states the rule in a form wider than that stated in the cases cited *sup.,* where the issue taking under the second limitation are spoken of as the issue of the unborn person mentioned in the first limitation; for the rule may not have been confined to this class of issue: *Honywood* v. *H.,* 1905, 92 L. T. 814, 815.

Cy-près doctrine under wills abolished.

This s. does not affect the *cy-près* doctrine under which, where real estate before 1926 was devised to an unborn person for life, with remainder to his children in tail, or in tail male, either successively or as tenants in common with cross remainders, the unborn person took an interest in tail, or in tail male accordingly: Gray, Perpetuities, 3rd ed., p. 506, paras. 643 *et seq.; Re Richardson,* 1904, 1 Ch. 332; *Re Rising,* 1904, 1 Ch. 533; *Re Mortimer,* 1905, 2 Ch. 502; *Monypenny* v. *Dering,* 1852, 2 De G. M. & G. 145; still this rule has been abolished by s. 130 (1), *sup.,* for no entailed interest can be limited by expressions which would not have created an entailed interest in a deed not executory. The rule was never applied to limitations in a deed not being an executory instrument: Gray, 3rd ed., p. 508, para. 646.

Implied estates tail.

Application of the perpetuity rule.

The result is that limitations which before 1926 would have created valid interests either under the *cy-près* doctrine or under the rule in *Shelley's Case* (s. 131) may, as regards remainders expectant on the life interest of an unborn person, become void for remoteness.

Remainders expectant on life interests of unborn persons.

To avoid this, either the limitation of life interests to unborn persons must be abandoned, or if they are limited, then the remainders over must be made to vest within lives in being at the date of the settlement or at the death of the testator and twenty-one years plus any period of gestation.

One rule for all property.

There is no hardship in applying the perpetuity rule (only one rule remains) to property generally in the same way as that rule has been applied before 1926 to personal estate.

Abolition of legal contingent remainders.

Legal remainders, whether vested or contingent, having been abolished by s. 1, the R. P. A., 1845, s. 8 (forfeiture, surrender or merger of the particular estate), and the Contingent Remainders A., 1877 (contingent remainders valid if capable of taking effect as executory limitations), have been repealed by L. P. (Amend.) A., 1924, 10th Sch.; and the question whether a contingent remainder can be treated as not being too remote because, if it takes effect at all, it must take effect immediately on the termination of the particular estate supporting it, will not arise in regard to limitations created after 1925.

Saving of interests validly created before 1926.

As respects legal contingent remainders created before 1926 which were capable of taking effect, these are not to fail, notwithstanding that they are converted into equitable interests: 1st Sch., Pt. I., *inf.*

A. for life, remainder to first son who attains twenty-five.

Thus, if before 1926 freeholds are legally limited to the use of A. (a bachelor) for life, with remainder to the use of his first son who attains twenty-five, that will still be a good limitation if A. is living when his first son attains twenty-five: *Symes* v. *S.*, 1896, 1 Ch. 272. But there is nothing in the Act to validate the limitation if A. dies before his first son attains twenty-five. A legal limitation which is bad is not validated by becoming an equitable limitation.

The perpetuity rule, where necessary, applied to legal contingent remainders: *Re Ashforth,* 1905, 1 Ch. 535; but if the remainder had to take effect, if it took effect at all, on the death of the tenant for life (a life in being), the ordinary perpetuity rule was not required.

An equitable limitation which was valid did not fail if subsequently clothed with the legal estate: *Re Freme,* 1891, 3 Ch. 167; *Re Robson,* 1916, 1 Ch. 116. Neither, it is conceived, would a legal limitation, which was valid, have failed by reason of the loss (*e.g.*, by the creation of a legal mortgage under a power before 1926) of the legal estate. At any rate, the loss of the legal estate under this Act will not affect it: 1st Sch., Pt. I.

Limitations after 1925 of property made to vest at twenty-one.

As to limitations, created after 1925, of property which will be made to vest at the age of twenty-one, see s. 163, *inf.*

(2) This section only applies to limitations or trusts created by an instrument coming into operation after the commencement of this Act.

Extent of s.

The rule in *Whitby* v. *Mitchell, sup.*, will continue to apply to limitations or trusts created by instruments coming into operation before 1926.

The rule does not apply where, after limitations to an unmarried woman and any husband surviving her, for their respective lives, a remainder is limited to a class of children ascertainable at her death: *Re Bullock,* 1915, 1 Ch. 493; *Re Garnham,* 1916, 2 Ch. 413.

Restrictions on the perpetuity rule.

162.—(1) For removing doubts, it is hereby declared that the rule of law relating to perpetuities does not apply and shall be deemed never to have applied—

(a) To any power to distrain on or to take possession of land or the income thereof given by way of indemnity against a rent, whether charged upon or payable in respect of any part of that land or not; or

This s. is new.

Power to

Para. (a) removes the doubts raised in 1 K. & E. (11th ed.) 408, 846. The

distrain as indemnity against a rent.

point was assumed in *Casamajor* v. *Strode*, 1819, 2 Swan, 347; affirmed, 1821, Jac. 630.

Bill of sale.

A power of distress given by way of indemnity against a rent is not, and is not to be deemed ever to have been, a bill of sale: s. 189, *inf.*

Implied remedies.

For the implied remedies on non-payment of rent: s. 190 (2).

(b) To any rentcharge created only as an indemnity against another rentcharge, although the indemnity rentcharge may only arise or become payable on breach of a condition or stipulation; or

Indemnity rentcharge.

See the implied covenants for indemnity against a rentcharge under s. 77 (1) (a), (b), (2), *sup.*, and 2nd Sch., Pts. VII. and VIII.; and as to a charge on the land remaining vested in the covenantor to secure payment of money payable under the implied covenants, s. 77 (7).

(c) To any power, whether exercisable on breach of a condition or stipulation or not, to retain or withhold payment of any instalment of a rentcharge as an indemnity against another rentcharge; or

Power to withhold payment of rentcharge.

This confirms the practice adopted in various parts in the North of England.

(d) To any grant, exception, or reservation of any right of entry on, or user of, the surface of land or of any easements, rights, or privileges over or under land for the purpose of—

(i) winning, working, inspecting, measuring, converting, manufacturing, carrying away, and disposing of mines and minerals;

Grant or reservation for mining purposes.

When minerals are excepted, it may be many years before rights over the surface or over intermediate strata are required to be exercised; they may not be wanted till other strata have been worked out; it will be possible to reserve contingent and future rights.

As to reservations, see s. 65, *sup.*; they need not be made to the grantor.

(ii) inspecting, grubbing up, felling and carrying away timber and other trees, and the tops and lops thereof;

Grants or reservations for purposes of a timber estate.

Here again rights of access for hauling timber may not be required till the timber is ripe to cut.

(iii) executing repairs, alterations, or additions to any adjoining land, or the buildings and erections thereon;

Grants and reservations for building purposes, &c.

Rights of access for these purposes may be far in excess of those required for occupation purposes: *cf. Smith* v. *Colbourne*, 1914, 2 Ch. 533.

(iv) constructing, laying down, altering, repairing, renewing, cleansing, and maintaining sewers, watercourses, cesspools, gutters, drains, water-pipes, gas-pipes, electric wires or cables or other like works.

Grants and reservations for local purposes.

Save as provided by this s., the rule appears to apply to the grant or reservation of easements: *Smith* v. *Colbourne*, 1914, 2 Ch. 533; Lewis, Perpetuity, pp. 619, 620; Gray, Perpetuities, 3rd ed., para. 314; see, however, *Ardley* v. *St. Pancras Guardians*, 1870, 39 L. J. Ch. 871; *L. & S. W. R.* v. *Gomm*, 1882, 20 Ch. D. 562, *per* Jessel, M. R., at p. 583; 27 L. Q. R. 155.

(2) This section applies to instruments coming into operation before or after the commencement of this Act.

Retrospective.

This s. is retrospective and declaratory; many of the reservations referred to have been made; these will be confirmed.

Validation of certain gifts void for remotenesss.

163.—(1) Where in a will, settlement or other instrument the absolute vesting either of capital or income of property, or the ascertainment of a beneficiary or class of beneficiaries, is made to depend on the attainment by the beneficiary or members of the class of an age exceeding twenty-one years, and thereby the gift to that beneficiary or class or any member thereof, or any gift over, remainder, executory limitation, or trust arising on the total or partial failure of the original gift, is, or but for this section would be, rendered void for remoteness, the will, settlement, or other instrument shall take effect for the purposes of such gift, gift over, remainder, executory limitation, or trust as if the absolute vesting or ascertainment aforesaid had been made to depend on the beneficiary or member of the class attaining the age of twenty-one years, and that age shall be substituted for the age stated in the will, settlement, or other instrument.

Gifts made to vest at twenty-one.

This s. is new; it adopts the proposals of the Real Property Commissioners' 3rd Report, p. 41.

"Income": s. 205 (1) (xix); "property": *ib.* (xx).

Void original gifts.

Independently of this s., a limitation to an unborn beneficiary, or to a class of beneficiaries including any unborn children on attaining an age greater than twenty-one, is void for remoteness, unless the limitation is so restricted by the context that the vesting will necessarily take place within the authorised period: *Leake* v. *Robinson*, 1817, 2 Mer. 363; Gray, Perpetuities, 3rd ed., ch. x.; Jarman, Wills, 6th ed., ch. xxxvii.; Theobald, 7th ed., 606.

Operation of s.

The s. operates to vary the limitation by substituting the age twenty-one for the age stated; it not only validates the original gift, but will vary that gift so as to validate a gift over.

(2) This section applies to any instrument executed after the commencement of this Act and to any testamentary appointment (whether made in exercise of a general or special power), devise, or bequest contained in the will of a person dying after such commencement, whether the will is made before or after such commencement.

Not retrospective.

The s. could not be made retrospective without affecting subsisting interests, but there is no objection to applying the principle to wills of testators who die after 1925 though made before 1926.

"Any instrument executed" after 1925: this would include an appointment made in exercise of a special power.

This amendment of the law has become more urgent by reason of the abolition of legal contingent remainders: see note to s. 161 (1).

(3) This section applies without prejudice to any provision whereby the absolute vesting or ascertainment is also made to depend on the marriage of any person, or any other event which may occur before the age stated in the will, settlement, or other instrument is attained.

Earlier vesting.

Thus, if the interest would vest before the donee attains the age of twenty-one years, the s. does not interfere with the earlier vesting.

Accumulations.

General restrictions on accumulation of income.

164.—(1) No person may by any instrument or otherwise settle or dispose of any property in such manner that the income thereof shall, save as hereinafter mentioned, be wholly or partially accumulated for any longer period than one of the following, namely:—

(a) the life of the grantor or settlor; or

(b) a term of twenty-one years from the death of the grantor, settlor or testator; or

(c) the duration of the minority or respective minorities of any person or persons living or in ventre sa mere at the death of the grantor, settlor or testator; or

(d) the duration of the minority or respective minorities only of any person or persons who under the limitations of the instrument directing the accumulations would, for the time being, if of full age, be entitled to the income directed to be accumulated.

In every case where any accumulation is directed otherwise than as aforesaid, the direction shall (save

as hereinafter mentioned) be void; and the income of the property directed to be accumulated shall, so long as the same is directed to be accumulated contrary to this section, go to and be received by the person or persons who would have been entitled thereto if such accumulation had not been directed.

This s. replaces the Accumulations A., 1800, s. 1, with amendments.

Definitions applicable.

"Instrument": s. 205 (1) (viii); "or otherwise," *e.g.*, by parol where writing is not required by law, or a trust is enforced to give effect to an undertaking given before the trust property is transferred to trustees: see ss. 53—55. "Dispose of": s. 205 (1) (ii); "property": *ib.* (xx); "income": *ib.* (xix). "Save as hereinafter mentioned": see sub-s. (2); also s. 165, *inf.*

Other restrictions on trusts for accumulation.

Independently of this s., a direction for the accumulation of income of any property may be either—

Determination by beneficiary.

(i) Voidable as against a donee, as repugnant to an immediate gift of the property to him, where the accumulation is for his benefit and merely postpones the enjoyment: *Wharton* v. *Masterman,* 1895, A. C. 186; *Re Swain,* 1905, 1 Ch. 669; see also *Re Trevanion,* 1910, 2 Ch. 538; *Saunders* v. *Vautier,* 1841, Cr. & Ph. 240; *Gosling* v. *G.*, 1859, Johns. 265; *Lombe* v. *Stoughton,* 1841, 12 Sim. 304; or, if the direction is not so voidable.

Void for remoteness.

(ii) Void under the rule against perpetuities, where the accumulation is directed for a period which may exceed the period allowed by that rule, unless the accumulation is for payment of debts: *Lord Southampton* v. *Marquis of Hertford,* 1813, 2 Ves. & B. 54 (during minorities of tenants for life and tenants in tail in possession); *Marshall* v. *Holloway,* 1820, 2 Swan, 432 (while any person beneficially interested should be under twenty-one); *Vawdrey* v. *Geddes,* 1830, 1 Russ. & M. 203 (until unborn children attain twenty-two years); *Curtis* v. *Lukin,* 1842, 5 Beav. 147 (until certain leases should become nearly expired; sixty years then unexpired); *Boughton* v. *James,* 1844, 1 Coll. 26; affirmed *Boughton* v. *B.*, 1848, 1 H. L. C. 406; *Browne* v. *Stoughton,* 1846, 14 Sim. 369 (while person in possession from time to time should be under twenty-one); *Bateman* v. *Hotchkin,* 1847, 10 Beav. 426 (accumulation to pay debts); *Scarisbrick* v. *Skelmersdale,* 1850, 17 Sim. 187 (during minority of every person entitled to possession, and while any child of his body so entitled should be under twenty-five); and see *Smith* v. *Cunninghame,* 1884, 13 L. R. Ir. 480 (limitations too remote).

Where the trust is too remote the direction is wholly void; not merely void for the excess, as under this s.

To purchase land.

(iii) Void under s. 166, *inf.*

What is an accumulation.

Implied directions.

Subject to s. 165, *inf.*, the s. extends to implied as well as express directions for accumulation: *Tench* v. *Cheese,* 1855, 6 De G. M. & G. 453, 462; *Mathews* v. *Keeble,* 1868, 3 Ch. 691, 696. The question whether a direction for accumulation is implied is one of construction; if the disposition cannot be carried into execution without an accumulation, or if accumulation, whether actually intended or not, would, but for the s., be the inevitable result of the disposition, then the s. applies: *Shaw* v. *Rhodes,* 1836, 1 Myl. & Cr. 135, 155; affirmed *sub nom. Evans* v. *Hellier,* 1837, 5 Cl. & Fin. 114; *Morgan* v. *M.*, 1851, 4 De G. & Sm. 164, 170; *Macpherson* v. *Stewart,* 1858, 28 L. J. Ch. 177, 179; *Tench* v. *Cheese, sup.*; *Mathews* v. *Keeble, sup.*

The dictum in *Elborne* v. *Good*, 1844, 14 Sim. 165, 175, 176, and the decision in *Bridgnorth Corporation* v. *Collins*, 1847, 15 Sim. 538 (as to accumulations not the result of any direction), are subject to qualification in this respect.

Contingent gifts of residuary personal estate.

A contingent or future bequest of residuary personal estate, including real estate held on trust for sale, whatever may be the date of the testator's death, carries the intermediate income, unless otherwise disposed of; pending the contingency there is an implied accumulation, which is within this s.: *Macdonald* v. *Bryce*, 1838, 2 Keen, 276; *Countess Bective* v. *Hodgson*, 1864, 10 H. L. C. 656; *Ralph* v. *Carrick*, 1877, 5 Ch. D. 984, 997; affirmed, without reference to the Thellusson A., 1879, 11 Ch. D. 873; *Re Taylor*, 1901, 2 Ch. 134.

Contingent devises and bequests after 1925.

Under s. 175, *inf.*, a contingent or future specific devise or bequest of property, whether real or personal, and a contingent residuary devise of freehold land, and a specific or residuary devise of freehold land to trustees upon trust for persons whose interests are contingent or executory, also carry intermediate income; hence any accumulation thereof will be within this s.

"Wholly or partially accumulated."

The s. applies where a share of income is to be accumulated at compound interest.

Compound interest.

Simple interest.

Query, whether the s. applies to accumulations at simple interest, that is, where the income is to be invested, but not the income of investments representing accumulations. In *Crawley* v. *C.*, 1835, 7 Sim. 427; *Re Clutterbuck*, 1901, 2 Ch. 285, 287; and *Mackay's Trustees* v. *M.*, 1909, S. C. 139, 143, it was held that such accumulations are within the s.: *per contra Re Pope*, 1901, 1 Ch. 64, 69. The mischief to be met is the postponement of enjoyment; the s. speaks of "the income thereof." Is it sufficient that the beneficiary should have the income of the accumulations, but not the income of the original fund? It seems not: *Re Hawkins*, 1916, 2 Ch. 570, 577; *Re Garside*, 1919, 1 Ch. 132, 137.

Postponement of enjoyment.

The preamble to the Accumulations A., 1800, which this s. replaces, confined the operation of that Act to accumulations by which the beneficial enjoyment of property was postponed: *Vine* v. *Raleigh*, 1891, 2 Ch. 13, 23, 24. The same rule of construction will apply to this s.: *Mitchell* v. *Simpson*, 1890, 25 Q. B. D. 183, 189, 192.

Directions to maintain property or replace wasting capital.

Trusts which give effect to the practice of the court in due course of administration, as respects the maintenance of property or replacement of wasting capital property appear to be outside this s.: *Bassil* v. *Lister*, 1851, 9 Hare, 177 (trust to pay premiums on policy on life of a stranger, effected by testator); *Vine* v. *Raleigh*, *sup.* (to maintain in good repair houses on settled estate); *Re Mason*, 1891, 3 Ch. 467 (trust to invest surplus income in augmentation of a general fund, which was applicable for rebuilding, reinstating and repairing leaseholds, part of the trust estate); *Re Gardiner*, 1901, 1 Ch. 697 (to effect and keep on foot a leasehold sinking fund policy).

The court will not, however, authorise the application of income to purposes properly attributable to capital: *Vine* v. *Raleigh*, *sup.*, at p. 26. Where, in a due course of administration, the accumulation would not be approved by the court, this s. applies: *Re Mason*, *sup.*, at p. 473.

Policies of insurance.

A trust or power to effect and keep on foot an insurance on a life, if made in good faith and not as a device to evade this s., is valid; what the estate receives back on the policy is not an accumulation of income, but a sum payable under the insurance contract: *Bassil* v. *Lister*, *sup.*; *Re Vaughan*, 1883, W. N. 89; *Cathcart* v. *Heneage*, 1883, 10 Rettie, 1205.

Choice of periods.

Subject to s. 165, only one of authorised periods can be adopted.

What is the appropriate period for which an accumulation is validly directed is a question of construction: *Jagger* v. *J.*, 1883, 25 Ch. D. 729; *Re Errington*, 1897, 76 L. T. 616.

Income apportionable.

The income is apportionable to the end of the period selected: *St. Aubyn* v. *St. A.*, 1861, 1 Dr. & Sm. 611.

(a) Life of grantor.

For instances where the life of the grantor was taken as appropriate, see *Re Lady Rosslyn*, 1848, 16 Sim. 391; *Heywood* v. *H.*, 1860, 29 Beav. 9; *Jagger* v. *J.*, *sup.*; *Re Errington*, *sup.*

Independently of references to other periods, this period would *primâ facie* be adopted in a settlement, not being a will.

(b) Twenty-one years from death.

The period of twenty-one years from the death of the grantor or settlor is reckoned so as to exclude the day of death, and include the twenty-first anniversary of that day: *Gorst* v. *Lowndes*, 1841, 11 Sim. 434, where dividends due on the anniversary were held to be validly accumulated.

Commencement from later date.

The period is reckoned from the death of the grantor or settlor, even where an accumulation is directed to commence from a future date, such as the death of an annuitant: *Webb* v. *Webb*, 1840, 2 Beav. 493; *Att.-Gen.* v. *Poulden*, 1844, 3 Hare, 555; *Campbell's Trustees* v. *C.*, 1891, 18 Rettie, 993; see also *Evans* v. *Hellier*, 1837, 5 Cl. & F. 114.

Twenty-one years *primâ facie* the period in wills.

If an accumulation is directed in a will without any express reference to an actual minority, the twenty-one years' period is generally applied: see *Griffiths* v. *Vere*, 1803, 9 Ves. 127; *McDonald* v. *Bryce*, 1838, 2 Keen, 276; *Tench* v. *Cheese*, *sup.*; *Oddie* v. *Brown*, 1859, 4 De G. & J. 179.

(c) Minorities of persons living, &c. at death of settlor.

The third period commences from the death of the settlor: see *Jagger* v. *J.* *sup.*, at p. 733; *Ellis* v. *Maxwell*, 1841, 3 Beav. 587.

(d) Minorities of persons who would, if of full age, be entitled to income.

The fourth period need not begin from the death of the settlor or testator; it is not confined to the minorities of persons who are born in the settlor's lifetime and may extend to successive minorities: *Re Cattell*, 1914, 1 Ch. 177.

No question of invalidity arises under this s. if the accumulation can be determined by a person of full age, a charity, or other beneficiary who has a vested indefeasible interest, in both the fund and the accumulations: *Wharton* v. *Masterman*, 1895, A. C. 186; *Re Swain*, 1905, 1 Ch. 669; in such a case the direction for accumulation is voidable: *S.CC.*, *sup.* See also *Martin* v. *Maugham*, 1844, 14 Sim. 230, where the court administered the fund *cy-près* for the benefit of a charity.

Extent of invalidity.

None, if accumulation determinable.

A direction for accumulation extending over a longer time than the s. allows, but within the period allowed by the perpetuity rule, is void only for the excess over the appropriate statutory period: *Griffiths* v. *Vere*, 1803, 9 Ves. 127; *Longdon* v. *Simpson*, 1806, 12 Ves. 295; *Shaw* v. *Rhodes*, 1836, 1 My. & Cr. 135, 154; affirmed *Evans* v. *Hellier*, 1837, 5 Cl. & Fin. 114; *Re Lady Rosslyn*, 1848, 16 Sim. 391; *Oddie* v. *Brown*, 1859, 4 De G. & J. 179; *Green* v. *Gascoyne*, 1865, 11 Jur. N. S. 145, 146.

Invalidity to extent of excess only.

Destination of invalid accumulations.

May go as undisposed of.

If a direction for accumulation is avoided, the income during the excess period belongs to the persons who would have been entitled thereto if such accumulation had not been directed. Independently of any express trusts, the disposition is construed as if a gap had been left between the end of the valid period of accumulation and the commencement of the next interest: *Weatherall* v. *Thornburgh*, 1878, 8 Ch. D. 261, 272; *Re Travis*, 1900, 2 Ch. 541.

Where the accumulation is a charge only on a primary gift.

Thus, if there is a primary clear gift, on which a trust for accumulation is subsequently imposed, the latter trust is rejected to the extent of the excess, and the income during the excess period belongs to the persons entitled under the primary gift: *Trickey* v. *T.*, 1832, 3 Myl. & K. 560; *Shaw* v. *Rhodes*, 1836, 1 Myl. & Cr. 135; affirmed without reasons in *Evans* v. *Hellier*, 1837, 5 Cl. & Fin. 114; and explained in *Re Clulow*, 1859, 1 John. & H. 639, 648; *Combe* v. *Hughes*, 1865, 2 De G. J. & S. 657; *Mackenzie* v. *M.'s Trustees*, 1877, 4 Rettie, 962; Gray, Perpetuities, 3rd ed., pp. 542—544.

No acceleration of subsequent interests.

Where there is no primary gift, the s. does not accelerate the interests of any person who takes on the termination of the trust for accumulation: *Eyre* v. *Marsden*, 1838, 2 Keen, 564; *Nettleton* v. *Stephenson*, 1849, 3 De G. &

Sm. 366; *Green* v. *Gascoyne*, 1865, 11 Jur. N. S. 145; *Weatherall* v. *Thornburgh*, 1878, 8 Ch. D. 261; *Re Travis*, 1900, 2 Ch. 541. This does not invalidate a trust disposing of income which cannot be validly accumulated.

Accumulations falling into residue.

The income of property specifically devised or bequeathed, or of trust legacies invalidly directed to be accumulated, in default of an express trust, falls into the residuary estate, if any, and forms part of the income of that estate: *Re Phillips*, 1880, 49 L. J. Ch. 198; *Re Cababé*, 1914, 59 Sol. J. 129; *Re Hawkins*, 1916, 2 Ch. 570; *Re Garside*, 1919, 1 Ch. 132; not following *Re Pope*, 1901, 1 Ch. 64.

Intestacies.

If there is no express trust or residuary devise or bequest which could include this income, or if the property to be accumulated is itself the residuary estate, the income devolves on the testator's intestacy as income of the estate, under Ad. of E. A., 1925, Pt. IV.

(2) This section does not extend to any provision—

(i) for payment of the debts of any grantor, settlor, testator or other person;

(ii) for raising portions for—

(a) any child, children or remoter issue of any grantor, settlor or testator; or

(b) any child, children or remoter issue of a person taking any interest under any settlement or other disposition directing the accumulations or to whom any interest is thereby limited;

(iii) respecting the accumulation of the produce of timber or wood;

and accordingly such provisions may be made as if no statutory restrictions on accumulation of income had been imposed.

This sub-s. reproduces the Accumulations A., 1800, s. 2, with amendments. The words "remoter issue" in paras. (a) and (b), and the words "or to whom any interest is thereby limited," in para. (b), are new.

"As if no statutory restrictions," &c.: these words refer not only to sub-s. (1), but also to s. 166.

(i) Provision for debts.

The debts may be existing, contingent or future: *Varlo* v. *Faden*, 1859, 1 De G. F. & J. 211 (contingent liability under covenant not yet broken); *Re Hurlbatt*, 1910, 2 Ch. 553 (liability under leases); see also *Re Mason*, 1891, 3 Ch. 467, 472. Also T. A., 1925, s. 26; *Re Baroness Llanover*, 1907, 1 Ch. 635 (mortgage to raise estate duty).

The persons, for whose debts provision may be made, include strangers: *Viscount Barrington* v. *Liddell*, 1852, 2 De G. M. & G. 480, 497.

Creation of fund in good faith.

The provision must be made in good faith: *Mathews* v. *Keeble*, 1868, 3 Ch. 691 (provision for set-off of debts due to testator, if debtor's share of residue became vested); following *Varlo* v. *Faden*, 1859, 27 Beav. 255; see also *Re Mason*, *sup.* (provision against liability which could not reasonably be expected to ripen into an actual debt); *Re Cox*, 1900, W. N. 89 (accumulation for reserve fund against future losses in testator's business, void beyond twenty-one years).

A direction to create a reserve fund against debts is not made otherwise than in good faith by the addition of another purpose: *Re Hurlbatt*, 1910, 2

Ch. 553, 559; but when the debts are provided for, the accumulation for any other purpose not within sub-s. (2) is subject to the restrictions in sub-s. (1): *Re Mason, sup.; Colquhoun* v. *C.*, 1892, 19 Rettie, 946.

Recoupment.

A provision for accumulating income to recoup capital applied in payment of debts is not within this sub-s.: *Re Heathcote,* 1904, 1 Ch. 826.

(ii) Portions for issue.

The provision as to portions is amended so as to extend it to issue remoter than children, and to make it clear that the "interest" of a parent or ancestor under sub-para. (b) need not be taken in the particular property, the income of which is to be accumulated; the sub-s. thus confirms *Viscount Barrington* v. *Liddell,* 1852, 2 De G. M. & G. 480, 500, and overrules on this point *Bourne* v. *Buckton,* 1851, 2 Sim. N. S. 91, 101; *Morgan* v. *M.*, 1851, 4 De G. & Sm. 164, 171.

Failure of interest limited to parent.

Further it is sufficient if some interest has been limited to the parent or ancestor, it is immaterial if that interest lapses or fails.

Nature of portions.

"Portions" within this sub-s. must in general be a sum of money secured to a child or other issue on or out of property; it is now immaterial whether the limitation of that property to its parents or ancestors took effect: *cf. Jones* v. *Maggs,* 1852, 9 Hare, 605, 607; *Re Stephens,* 1904, 1 Ch. 322, 327; see also *Edwards* v. *Tuck,* 1853, 3 De G. M. & G. 40, 58. The word is not confined to portions for younger children under a strict settlement: *Watt* v. *Wood,* 1862, 2 Drew. & Sm. 56, 60.

The portions may be portions directed to be raised either by a prior instrument or by the instrument directing accumulation: *Bourne* v. *Buckton, sup.; Viscount Barrington* v. *Liddell, sup.*

"Raising portions."

The portions must be such as are "raised," that is, out of a larger fund; where the provision is for augmenting the entire fund by accumulation, and then handing over that fund with accumulations, this is not a provision within this para.: *Eyre* v. *Marsden,* 1838, 2 Keen, 564; *Edwards* v. *Tuck,* 1853, 3 De G. M. & G. 40, 58; *Re Elliott,* 1918, 2 Ch. 150, not following *Middleton* v. *Losh,* 1852, 1 Sm. & G. 61.

It makes no difference whether the property to be augmented and handed over is a pecuniary or specific legacy, a specific devise, or a residuary estate: *S.CC.; Re Clulow,* 1859, 1 John. & H. 639; *Edwards* v. *Tuck, sup.; Burt* v. *Sturt,* 1853, 10 Hare, 415; the restrictions against accumulation apply.

Accumulation of annuities or income of legacies.

In some cases, annuities or the income of legacies may be accumulated to provide portions: *Beech* v. *Lord St. Vincent,* 1850, 3 De G. & Sm. 678; *Viscount Barrington* v. *Liddell,* 1852, 2 De G. M. & G. 480; *St. Paul* v. *Heath,* 1865, 11 Jur. N. S. 903; *Re Stephens,* 1904, 1 Ch. 322; *Colquhoun's Trustees* v. *C.*, 1907, S. C. 346. In other cases such directions do not amount to "raising portions": *Jones* v. *Maggs,* 1852, 9 Hare, 605; *Morgan* v. *Morgan,* 1851, 4 De G. & Sm. 164; *Drewett* v. *Pollard,* 1859, 27 Beav. 164; *Watt* v. *Wood,* 1862, 2 Drew. & Sm. 56; *Re Elliott,* 1918, 2 Ch. 150.

Children or issue.

The class of persons for whom portions may be raised is now extended to issue remoter than children; under the Accumulations A., 1800, it was confined to children.

Children and issue born after the date of the disposition are included: *Beech* v. *Lord St. Vincent, sup.;* but not illegitimate children: *Shaw* v. *Rhodes,* 1836, 1 Myl. & Cr. 135, *per* Bosanquet, J., at p. 159; see *S. C.*, on appeal, *Evans* v. *Hellier,* 1837, 5 Cl. & Fin. 114, 125.

The benefit is none the less a portion because it is given to all the children, including the eldest: *Re Stephens, sup.*, at p. 327; but the fact that younger children only are provided for is not sufficient to bring the trust within this sub-s.: *Watt* v. *Wood,* 1862, 2 Drew. & Sm. 56.

(iii) Timber produce.

As to a direction respecting the proceeds of sale of timber which is wholly void under the perpetuity rule, see *Ferrand* v. *Wilson,* 1845, 4 Hare, 344.

(3) The restrictions imposed by this section apply to instruments made on or after the twenty-eighth day of July, eighteen hundred, but in the case of wills only where the testator was living and of testamentary capacity after the end of one year from that date.

Extent of s.

This sub-s. reproduces the Accumulations A., 1800, s. 4.

In cases not within this s., the rule against perpetuities is the only restriction; if the direction for accumulation is such that the accumulation must necessarily come to an end, and the accumulated fund vest in the beneficiaries, within the period allowed by the rule, the direction is valid: *Thellusson* v. *Woodford*, 1805, 11 Ves. 112.

Qualification of restrictions on accumulation.

165. Where accumulations of surplus income are made during a minority under any statutory power or under the general law, the period for which such accumulations are made is not (whether the trust was created or the accumulations were made before or after the commencement of this Act) to be taken into account in determining the periods for which accumulations are permitted to be made by the last preceding section, and accordingly an express trust for accumulation for any other permitted period shall not be deemed to have been invalidated or become invalid, by reason of accumulations also having been made as aforesaid during such minority.

This s. is new, and confirms the *dicta* in *Griffiths* v. *Vere*, 1803, 9 Ves. 127, 136; *Tench* v. *Cheese*, 1855, 6 De G. M. & G. 453, 463; *Mathews* v. *Keeble*, 1868, 3 Ch. 691, 696.

Statutory accumulations during minorities.

"Under any statutory power": this refers to C. A., 1881, ss. 42—43, now replaced, as respects accumulations, by T. A., 1925, s. 31.

"Under the general law," independently of any statutory direction to accumulate, the fact that infants could not give receipts for income (see now as to married infants: s. 21, *sup.*) necessarily involved an accumulation of income.

For other cases where income is necessarily accumulated, but the accumulation is not treated as being within s. 164, *sup.*, see *Lombe* v. *Stoughton*, 1841, 12 Sim. 304.

Not more than one period to be taken.

Thus, if a testator directs the income of a fund to be accumulated for twenty-one years from his death, and after this period has expired the fund, in the events which happen, is held in trust for an infant, the accumulations for the twenty-one years' period and for a further period during the minority are all valid.

Restriction on accumulation for the purchase of land.

166.—(1) No person may settle or dispose of any property in such manner that the income thereof shall be wholly or partially accumulated for the purchase of land only, for any longer period than the duration of the minority or respective minorities of any person or persons who, under the limitations of the instrument directing the accumulation, would for the time being, if

of full age, be entitled to the income so directed to be accumulated.

This s. replaces the Accumulations A., 1892, s. 1.

"Dispose of": s. 205 (1) (ii). "Property": *ib.* (xx). "Income": *ib.* (xix). "Accumulated": see note to s. 164, *sup.* "Land": s. 205 (1) (ix). "Minority": see note to s. 164.

Direction to purchase "real estate."

A direction for the purchase of real estate appears to be a direction for the purchase of land within this s.: *Re Clutterbuck,* 1901, 2 Ch. 285.

Partially accumulated.

A direction to accumulate at simple interest appears to be a partial accumulation: *Re Clutterbuck,* 1901, 2 Ch. 285, 287; and see note to s. 164.

(2) This section does not, nor do the enactments which it replaces, apply to accumulations to be held as capital money for the purposes of the Settled Land Act, 1925, or the enactments replaced by that Act, whether or not the accumulations are primarily liable to be laid out in the purchase of land.

Accumulations to be held as capital money.

This sub-s. confirms the decision in *Re Dawson* (or *Danson*), 1895, 13 R. 633; 1895, W. N. 102, that a direction to accumulate income for twenty-one years, the accumulations to be added to capital money for the purposes of the S. L. A., is not within this s.

The mischief to be met by this s. is a trust to purchase land, if the accumulations are available for other purposes: see S. L. A., 1925, s. 73; the reason for curtailing the periods authorised by s. 164 is no longer applicable.

"Primarily liable to be laid out in the purchase of land."

Under the practice before 1926, when money was intended to devolve with settled lands, it was settled so as to be "primarily liable to be laid out in the purchase of land," in order to effect a notional conversion: *Re Walker,* 1908, 2 Ch. 705; though in the majority of cases it was never intended to purchase land.

The test is, must the money be laid out in the purchase of land? if not, then this s. will not apply.

(3) This section applies to settlements and dispositions made after the twenty-seventh day of June, eighteen hundred and ninety-two.

Extent of s.

As to settlements and dispositions made before the 28th June, 1892, see s. 164 *sup.* The Act of 1892 received the Royal Assent on 28th June; hence it came into force at the commencement of that day: Acts of Parl. (Commencement) A., 1793; *R.* v. *Smith,* 1910, 1 K. B. 17, 24.

The s. applies to a will made before 28th June, 1892, of a testator who dies after: *Re Baroness Llanover,* 1903, 2 Ch. 330.

Part VIII.

Married Women and Lunatics.

Married Women.

Abolition of acknowledgments by married women.
3 & 4 Will. 4, c. 74.
20 & 21 Vict. c. 5.

167.—(1) Every disposition (including a disclaimer) of real or personal property or any interest therein which a married woman is under the Fines and Recoveries Act, 1833, or the Married Women's Reversionary Interests Act, 1857, or any other enactment authorised to make by deed acknowledged in the manner prescribed by any such Act as amended by any subsequent enactment, shall, from the date of execution of the deed of disposition, be effectual if made by her with the concurrence of her husband, but without acknowledgment.

This sub-s. is new, and abolishes the need for an acknowledgement of a deed made by a married woman. The Rules made under C. A., 1882, s. 7, respecting acknowledgments have been repealed.

"Disclaimer": see also s. 168, *inf.*

"As amended": see C. A., 1882, s. 7; S. L. R. (No. 2) A., 1888.

(2) The separate examination of a married woman shall not be necessary as a preliminary to any order of the court directing payment or transfer of any money or property to her or in accordance with her directions.

Separate examination unnecessary.

The F. & R. A., 1833, s. 80, as to separate examination, is repealed: L. P. (Amend.) A., 1924, 10th Sch.

(3) Where the court, under any statutory power, dispenses in any case with the concurrence of the husband, and the court is satisfied that the wife is entitled for her separate use to the property to be dealt with, the court may by the order declare that the disposition shall have the same effect as if the husband had concurred therein and had disposed of his rights and interests, and the disposition by the wife alone shall take effect accordingly without acknowledgment.

Dispensing with husband's concurrence.

As to dispensing with the husband's concurrence, see F. & R. A., 1833, s. 91; Married Women's Reversionary Interests A., 1857, s. 2; R. S. C., Ord. 54, r. 12, 12B.

The s. confirms *Goodchild* v. *Dougal*, 1876, 3 Ch. D. 650.

"Separate use."

If the married woman is entitled as her separate property under M. W. P. A., 1882, the s. is not required, for in that case the husband has no estate to support the "separate use."

Husband's common law rights.

"Had disposed of his rights": this sub-s. overrules *Fowke* v. *Draycott*, 1885, 29 Ch. D. 996, on this point.

(4) This section applies only to deeds executed and orders made after the commencement of this Act, and does not render necessary the concurrence of a husband in any deed where such concurrence would not have been requisite if this section had not been passed.

Thus the husband is not a necessary party where the case is within M. W. P. A., 1882. Not retrospective.

As to enlargement deeds: s. 153 (6) (i); trust estates: s. 170; disclaimers: s. 168.

168.—(1) A married woman has power by deed to disclaim any estate or interest in land with or without the concurrence of her husband as the case may require. Disclaimer by married woman.

This s. reproduces R. P. A., 1845, s. 7, with amendments. Disclaimer as respects land.

"Concurrence": see sub-s. (2), *inf.*

A married woman may disclaim separate property under the M. W. P. A., notwithstanding that she is restrained from anticipation: *Re Wimperis*, 1914, 1 Ch. 502. Disclaimer of property subject to a restraint.

(2) A husband is not a necessary party to any disclaimer by his wife where—

(a) the wife, if there were no disclaimer, would have been entitled to the property for her separate use or as her separate property; or

(b) the property consists of a trust estate.

This sub-s. is new, but declaratory; it is not confined to land. When husband need not concur.

"Separate property": see M. W. P. A., 1882.

As to dispositions of trust estates by married women, see s. 170, *inf.*; she can dispose of settled land without her husband, for after 1925 it becomes a trust estate: S. L. A., 1925, s. 25. Trust estates and settled land.

169. Where a married woman is restrained from anticipation or from alienation in respect of any property or any interest in property belonging to her, or is by law unable to dispose of or bind such property or her interest therein, including a reversionary interest arising under her marriage settlement, the court may, if it thinks fit, where it appears to the court to be for her benefit, by judgment or order, with her consent, bind her interest in such property. Power for court to bind interest of married woman.

This s. replaces C. A., 1911, s. 7.

This s. is wider in its application than C. A., 1881, s. 39, which was only available where the married woman's inability to dispose of the property in question arose from a restraint on anticipation. It applies to cases not covered by Malins' A. Wide scope of section.

Before C. A., 1881, s. 39, the court had no power—except by way of sanctioning a compromise of proceedings: see Seton, 7th ed., 896; *Wilton* v. Cases affected.

Hill, 1855, 25 L. J. Ch. 156; *Wall* v. *Rogers*, 1869, 9 Eq. 58—to bind the interest of a married woman restrained from anticipation, however beneficial it might be for her to do so: *Robinson* v. *Wheelwright*, 1855, 21 Beav. 214; 6 D. M. & G. 535; *Smith* v. *Lucas*, 1881, 18 Ch. D. 531; *Re Glanvill*, 1885, 31 Ch. D. 532.

Nor could she bind it by way of admission or estoppel: *Lady Bateman* v. *Faber*, 1897, 2 Ch. 223; 1898, 1 Ch. 144. But see *Macnaghten* v. *Paterson*, 1907, A. C. 483.

Powers of Divorce Court to deal with restraint.

As to the jurisdiction of the court to deal with an existing restraint on anticipation, when acting under its statutory power of directing or varying settlements in matrimonial causes, see *Michell* v. *M.*, 1891, P. 208; *Thomson* v. *T.*, 1896, P. 263, 271; *Merton* v. *M.*, 1900, 83 L. T. 223; *Churchward* v. *C.*, 1910, P. 195; *Loraine* v. *L.*, 1912, P. 222.

Other statutory powers.

A married woman's property restrained from anticipation may also be impounded under T. A., 1925, s. 62, and costs may be recovered thereout under M. W. P. A., 1893, s. 2.

Under the Bkcy. A., 1914, s. 52, where a married woman who has been adjudged bankrupt has separate property, the income of which is subject to a restraint on anticipation, the court may order the whole or some part of the income to be paid to the trustee for distribution amongst the creditors, having regard to the means of subsistence available for her and her children.

Procedure.

Applications under the repealed s. were made by summons in chambers (C. A., 1881, s. 69 (3)), and not by petition: *Re Lillwall*, 1882, 30 W. R. 243; *Latham* v. *L.*, 1889, W. N. 171; but see *Re Blundell*, 1901, 2 Ch. 221. The same practice will continue under this s.

Service on trustees.

Service on the trustees for the married woman was dispensed with in *Re Little*, 1887, 36 Ch. D. 701; and see *Re Tippett & Newbould*, 1888, 37 Ch. D. 444, where the order removing the restraint (if any) was made in the absence of the trustees; and as to the practice, see *Re Pollard*, 1896, 1 Ch. 901; 2 Ch. 552.

Policy of s.

As to the intention and policy of the repealed s., see *Tamplin* v. *Miller*, 1882, W. N. 44; *Re Warren*, 1883, 52 L. J. Ch. 928; *Re Pollard, sup.*; *Thomson* v. *T., sup.* The jurisdiction has of late years been exercised very sparingly.

Forms of orders.

For forms of orders, see Seton, 7th ed., pp. 866—869; and see also the following cases in which relief was granted: *Hodges* v. *H.*, 1882, 20 Ch. D. 749; *Re Flood*, 1883, 11 L. R. Ir. 355; *Sedgwick* v. *Thomas*, 1883, 48 L. T. 100; *Musgrave* v. *Sandeman*, 1883, *ib.* 213; *Ex p. Thompson*, 1884, W. N. 28; *Re Wright*, 1885, 15 L. R. Ir. 331; *Re Seagrave*, 1886, 17 *ib.* 373; *Re Little, sup.*; *Re Currey*, 1887, W. N. 28; *Re C.*, 1887, 56 L. J. Ch. 556; *Re Millar*, 1890, 25 L. R. Ir. 107; *Re Tennant*, 1890, *ib.* 522; *Re Milner*, 1891, 3 Ch. 547; *Bates* v. *Kesterton*, 1896, 1 Ch. 159, 165; *Re Wilson-Stewart*, 1896, 75 L. T. 381; *Re Sawyer*, 1896, 1 Ir. R. 40.

Cases where relief granted.

Where refused.

In the following cases relief was refused: *Re Warren, sup.*; *Re Wheatley*, 1884, 27 Ch. D. 606; *Re Wood*, 1885, 29 Sol. J. 183; *Re Jordan*, 1886, 34 W. R. 270; *Re Little*, 1889, 40 Ch. D. 418; *Re S.*, 1893, W. N. 127; *Re Pollard sup.*; *Thomson* v. *T., sup.*; *Re Blundell, sup.*; *Re Giorgi*, 1901, 45 Sol. J. 615. Naturally the large majority of cases under the repealed s. were disposed of in chambers.

As to the wife's right to indemnity against the husband, where the restraint is removed for payment of his debts, see *Paget* v. *P.*, 1898, 1 Ch. 47, 470.

How consent taken.

The consent of a married woman under this s. will not, it is conceived, be ascertained by a separate examination: *Hodges* v. *H., sup.*; *Musgrave* v. *Sandeman, sup.*; *Harris* v. *Harford*, 1888, W. N. 190; s. 167 (2), *sup.*, and note thereto.

Restraint when determined by

A decree of judicial separation under the Jud. A., 1925, s. 184, re-enacting Matrimonial Causes A., 1857, s. 7, or a protection order under s. 21 of the latter Act, or under s. 8 of the Matrimonial Causes A., 1858, constitutes the

married woman a *feme sole* with respect to property acquired after the decree or the desertion, and while the decree or protection order is in force: *Munt* v. *Glynes*, 1872, 41 L. J. Ch. 639; *Re Hughes*, 1898, 1 Ch. 529; Jud. A., 1925, s. 193; including interests, reversionary at the date of the decree or desertion, which fall into possession during the continuance of the separation, or the protection order (see Matrimonial Causes A., 1858, s. 8; *Re Insole*, 1865, 1 Eq. 470); but not with respect to property to which she was entitled in *possession* at the date of the decree or the desertion: *Waite* v. *Morland*, 1888, 38 Ch. D. 135; *Hill* v. *Cooper*, 1893, 2 Q. B. 85. If, after a decree of judicial separation, cohabitation is resumed, all property to which she is *then* entitled is to be held for her separate use, or as her separate property, subject to any written agreement made between her and her husband whilst separate: Jud. A., 1925, s. 193 (1) (b) (ii), re-enacting Matrimonial Causes A., 1857, s. 25. An order under s. 5 (a) of the Summary Jurisdiction (Married Women) A., 1895 (which replaces s. 4 of the Matrimonial Causes A., 1878), has the same effect as a decree of judicial separation.

judicial separation or protection order.

A decree *nisi* for dissolution of the marriage does not constitute a married woman a *feme sole*: *Norman* v. *Villars*, 1877, 2 Ex. D. 359; *Sinclair* v. *Fell*, 1913, 1 Ch. 155.

Decree *nisi*.

170.—(1) A married woman is able to acquire as well from her husband as from any other person, and hold, any interest in property real or personal either solely or jointly with any other person (whether or not including her husband) as a trustee or personal representative, in like manner as if she were a feme sole; and no interest in such property shall vest or be deemed to have vested in the husband by reason only of the acquisition by his wife.

Acquisitions and dispositions of trust estates by married women.

This sub-s. is new, and enables a married woman to acquire and hold property as a trustee or personal representative; it confirms *Re Leslie*, 1911, 1 Ch. 611, 617.

Power to acquire and hold.

"Property": s. 205 (1) (xx). "Personal representative": *ib.* (xviii).

(2) A married woman is able, without her husband, to dispose of, or to join in disposing of, any interest in real or personal property held by her solely or jointly with any other person (whether or not including her husband) as trustee or personal representative, in like manner as if she were a feme sole.

This sub-s. reproduces, with amendments, M. W. P. A., 1907, s. 1 (1), which removed the difficulty created by the decision in *Re Harkness & Allsopp*, 1896, 2 Ch. 358.

Dispositions of trust estates.

"Dispose of": s. 205 (1) (ii).

(3) This section applies to a woman married after the thirty-first day of December, eighteen hundred and eighty-two, and to a woman married before the first day of January, eighteen hundred and eighty-three, who

became a trustee or personal representative on or after that date.

Extent of s.

Compare M. W. P. A., 1882, ss. 2, 5, *inf.*

(4) This section operates to render valid and confirm all such acquisitions and dispositions made after the thirty-first day of December, eighteen hundred and eighty-two, whether before or after the commencement of this Act, but where any title or right has been acquired through or with the concurrence of the husband before the first day of January, nineteen hundred and eight, that title or right shall prevail over any title or right which would otherwise be rendered valid by this section or any enactment which it replaces.

Confirmation of dealings with trust estates.

This sub-s. replaces M. W. P. A., 1907, s. 1 (2).

(5) This section does not prejudicially affect any beneficial interest of the husband of any such woman.

Husband's beneficial interests.

This sub-s. is declaratory.

Lunatics.

Power for court to settle the beneficial interests of a lunatic or defective.

171.—(1) The court may direct a settlement to be made of the property of a lunatic or defective, or any part thereof or any interest therein, on such trusts and subject to such powers and provisions as the court may deem expedient, and in particular may give such directions—

(a) where the lunatic or defective is the holder of a title of honour, and the property would not devolve with such title either under a testamentary disposition executed by him, or on his intestacy if he died intestate; or

(b) where the property has been acquired under a settlement, a will or an intestacy, or represents property so acquired; or

(c) where by reason of any change in the law of intestacy or of any change in circumstances since the execution by the lunatic or defective of a testamentary disposition, or of any absence of information at the time of such execution, or on account of the former management of the property or the expenditure of money in improving or maintaining the same or for any

other special reason the court is satisfied that any person might suffer an injustice if the property were allowed to devolve as undisposed of on the death intestate of the lunatic or defective or under any testamentary disposition executed by him.

Cases in which the court will act.

This s. is new, and enables the Judge in Lunacy or the High Court (sub-s. (8)) to direct a settlement of the property of a lunatic or defective of full age: sub-s. (3), *inf.*

"Court": sub-s. (8), *inf.* This s. is not confined to settlements of land. "Property": *ib.* (xx). "Lunatic" and "defective": *ib.* (xiii). "Change in the law of intestacy": Ad. of E. A., 1925, Pt. IV. "Testamentary disposition": sub-s. (6), *inf.*

The court is, under this s., able to give effect to the legitimate expectations of the family and dependents of the lunatic or defective; in particular an expectant successor may have managed and expended money on the property.

As to further matters which may be considered, see sub-s. (5), *inf.*

(2) The court may direct the committee or receiver of the lunatic or defective, or any trustee for him, to execute any vesting instrument, trust instrument, conveyance (including a disentailing assurance) or other instrument, and to do any other act or thing which may be required for giving effect to the settlement, in the name and on behalf of the lunatic or defective, and, for that purpose, may make a vesting order or appoint a person to convey; and any settlement approved by the court shall be as effectual and binding on all persons interested as if the same had been made by the lunatic or defective while of full capacity.

Vesting instruments, &c.

Effect of orders.

As to vesting instruments: S. L. A., 1925, ss. 4, 117 (1) (xxxi).

The vesting order, or conveyance by a person appointed to convey, operates as a conveyance executed by the lunatic or defective: s. 9, *sup.* Any conveyance will be made in the name of the lunatic or defective.

(3) This section applies whether or not the lunatic or defective has executed a testamentary disposition and notwithstanding that it is not known whether he has executed such a disposition or not, but does not apply when he is an infant.

"Testamentary disposition": sub-s. (6), *inf.*

Infancy.

While a lunatic is an infant his affairs will, if necessary, be dealt with by the High Court; as to making vesting orders respecting the beneficial interests of an infant: T. A., 1925, s. 53. See also the Infant Settlements A., 1855.

(4) Any person who under the Administration of Estates Act, 1925, has, or if that Act, or any enactment

15 Geo. 5, c. 23.

which it replaces, had not been passed would have had, a spes successionis (whether under any testamentary disposition which is known to exist or in the event of the intestacy of the lunatic or defective) or an interest in the property of the lunatic or defective or in any part thereof, as well as the committee or receiver and any other person who may be authorised by rules made under this section, shall have power to apply to the court for an order under this section.

Persons to apply.

As to the persons entitled on intestacy: Ad. of E. A., 1925, Pt. IV.

"If that Act . . . had not been passed would have had," &c.: this brings in the old statutory next of kin, &c., and the heir. It is conceived, however, that the court will only have regard to the old law where the disability commenced before 1926.

As to an heir succeeding to the real estate of a lunatic or defective living and of full age on 1st January, 1926: Ad. of E. A., 1925, s. 51 (2).

For Rules in Lunacy, see sub-s. (9), *inf.*, and Appendix No. VI., Vol. II.

(5) Subject to making due provision for the maintenance of the lunatic or defective in accordance with his station in life, whether out of the capital or income of the property settled or other property or partly in one way and partly in another, and to providing, by means of a power of appointment or revocation, or otherwise, for the possibility of the lunatic or defective recovering full capacity, the court may, in making any order under this section, have regard to—

(i) the manner in which the property has been settled or dealt with on former occasions;

(ii) in the case of land, the welfare of the labourers and other persons employed thereon, and the expediency of settling personal estate to devolve therewith;

(iii) the continuation or provision of any pensions, and the application of any part of the income for charitable purposes;

(iv) the provisions of any testamentary disposition of the lunatic or defective;

(v) the expediency of providing for—

(a) jointures, portions, and other annual or capital charges and powers to create the same;

(b) discretionary trusts, trusts for effecting or maintaining policies of insurance, powers of appointment, sinking funds for making

good loss by fire (in lieu of, or in addition to, insurance) or for any other purpose;

(c) the extension of any statutory powers of investment, management or otherwise;

(d) the manner in which any costs are to be raised and paid, whether out of the settled property or otherwise;

(e) any other matter or thing which, having regard to the nature of the settlement, or the property to be settled, and the management, development, and enjoyment thereof, and to the persons who are to take, either successively or otherwise, the court may consider material.

Further matters for consideration.

The first matter for consideration is the maintenance of the lunatic; subject to this and to reserving a power of revocation, the discretion is as wide as could well be conferred.

If land is settled, otherwise than by way of trust for sale, the requirements of S. L. A., 1925, ss. 4 and 5, must be complied with; there must not be less than two nor more than four trustees being individuals, unless a trust corporation acts: *ib.* s. 94; T. A., 1925, ss. 14 and 34.

If the settlement is made by way of trust for sale, regard must be had to ss. 25 to 28, *sup.*, and T. A., 1925, ss. 14 and 34.

(6) In this section, "testamentary disposition" means an instrument executed by the lunatic or defective while of full testamentary capacity, which, if unrevoked, might, on his death, be proved as a will or codicil; and the court may act on such evidence as to the existence or absence of a testamentary disposition as it thinks fit.

Testamentary disposition.

As to the lodgment of such dispositions in the Lunacy Office, see sub-s. (9), *inf.*; Rules in Lunacy, 1892, r. 45.

(7) At any time before the death of the lunatic or defective, the court may, as respects any property remaining subject to the trusts of a settlement made under this section, on being satisfied that any material fact was not disclosed to the court when the settlement was made, or on account of any substantial change in circumstances, by order vary the settlement in such manner as it thinks fit, and give any consequential directions.

Power to vary settlement.

"Court": sub-s. (8), *inf.*

The grounds for variation under this sub-s. are limited to two, namely, (i) non-disclosure of a material fact, or (ii) substantial change in circumstances.

(8) For the purposes of this section, "the court" means the Judge in Lunacy, or, in such cases as may be prescribed by rules of court, the High Court.

"Court."

The jurisdiction of the High Court under this sub-s. is assigned to the Chancery Division: s. 203 (4), *inf.*; but the rules of court leave this s. to be dealt with in Lunacy: Appendix No. XI., Vol. II.

(9) Rules in lunacy or, as respects cases within the jurisdiction of the High Court, rules of court, may be made for giving effect to the provisions of this section, and in particular for compelling information to be furnished respecting, and production of, testamentary dispositions, and the lodgment thereof in court, for prescribing what notices, if any, of the proceedings are to be served, for dispensing with such notices and, when necessary, for making representation orders.

Rules.

As to lunacy rules under this s., see Appendix No. VI., Vol. II.

Part IX.

Voidable Dispositions.

Voluntary conveyances to defraud creditors voidable.

172.—(1) Save as provided in this section, every conveyance of property, made whether before or after the commencement of this Act, with intent to defraud creditors, shall be voidable, at the instance of any person thereby prejudiced.

This s. replaces 13 Eliz. c. 5; "Conveyance": s. 205 (1) (ii); it does not include a will. The comma after "property" is misplaced, it should come after "made."

Extent of the s.

It applies to every kind of property which is assets for payment of creditors. Save in the case of conveyances excepted from the operation of the s. by sub-s. (3), *inf.*, it applies to every form of conveyance: *Twyne's Case*, 1601, 3 Co. Rep. 86.

Conveyances not voidable unless there is an intent to defraud creditors.

The s. does not render a conveyance voidable unless there is an intent to defraud, but such an intent may be presumed from the facts relating to the transaction: *Twyne's Case, sup.*; May, F. & V. Conveyances, 3rd ed., 11.

Special intention to defraud a particular creditor is not necessary.

Where a general intention to defraud creditors is proved, any person prejudiced may set aside the conveyance, even though there was no special intention to defraud that person.

Time limit.

There is no time limit within which a conveyance within this s. must be set aside, thus differing from bankruptcy law.

As to this s. generally.

As to this s. generally, see May on F. & V. Conveyances, 3rd ed., 13; Williams on Bankruptcy, 12th ed., 6.

Effect of this s. on settlements in consideration of marriage.

Settlements in consideration of marriage are not within this s. unless the only reason for the marriage was to defeat creditors: *Re Pennington*, 1888, 5 Mor. 216, 268.

(2) This section does not affect the operation of a disentailing assurance, or the law of bankruptcy for the time being in force.

Disentailing assurance.

A disentailing assurance and resettlement will not be set aside: *Clements* v. *Eccles*, 1849, 11 Ir. Eq. R. 229.

Concurrent operation in bankruptcy.

As to the avoidance of fraudulent conveyances in bankruptcy: Bkcy. A., 1914, ss. 1 and 40 to 47; also Wms. on Bkcy., 12th ed., 1 and 276 to 311; as a whole the bankruptcy law affords a wider protection to creditors, hence recourse is seldom had to this s.

(3) This section does not extend to any estate or interest in property conveyed for valuable consideration and in good faith or upon good consideration and in good faith to any person not having, at the time of the conveyance, notice of the intent to defraud creditors.

Protection of purchasers in good faith.

Save that the words "for valuable consideration and in good faith" have been added, this sub-s. reproduces s. 5 of 13 Eliz. c. 5, as to which see May on Fraudulent and Voluntary Conveyances, 3rd ed., 50; for the corresponding provision in the Bkcy. A., 1914, see s. 45; Williams on Bankruptcy, 12th ed., 302.

"Good consideration."

"Good consideration" or "valuable consideration" is not alone sufficient to support the conveyance; the test is whether it is made in good faith: *Twyne's Case*, 1601, 3 Co. Rep. 86. "Good consideration" in modern times merely imports the motive of natural affection towards relations, and may have no validity against creditors. In 1584 the expression "good consideration" was frequently used indiscriminately with "valuable consideration," and sometimes had the same meaning. After 1925 "good consideration" will be taken into account in the same way as "valuable consideration." An honest deed of family arrangement was always valid: *Re Johnson*, 20 Ch. D. 389.

Purchaser of an interest.

A purchaser of any interest in the property will be protected in regard to that interest: *Halifax, &c. Co.* v. *Gledhill*, 1891, 1 Ch. 31.

Notice by the grantees.

Generally the grantor must (sub-s. (1)) have a fraudulent intent: *Nunn* v. *Willsmore*, 8 T. R. 521; though in some cases it is sufficient if the grantees are aware that the conveyance would prejudice creditors: *Cornish* v. *Clark*, 1872, 14 Eq. 184.

173.—(1) Every voluntary disposition of land made with intent to defraud a subsequent purchaser is voidable at the instance of that purchaser.

Voluntary disposition of land how far voidable as against purchasers.

This s. reproduces 27 Eliz. c. 4, as amended by the Voluntary Conveyances A., 1893; see May on Fraudulent and Voluntary Conveyances, 3rd ed., 5 *et seq.*

Voluntary settlements, effect of bankruptcy of settlor.

As to the effect of bankruptcy on a voluntary disposition or settlement: Bkcy. A. 1914, s. 42; *Re Tankard*, 1899, 2 Q. B. 57 (liability of donee to account); *Re Brall*, 1893, 2 Q. B. 381 (validity of title of a purchaser in good faith from donee); *Re Carter & Kenderdine*, 1897, 1 Ch. 776 (time when the trustee's title accrues); but see L. C. A., 1925, s. 2 (registration of petition as a pending action), s. 3 (protection of purchaser without notice of available act of bankruptcy), s. 6 (registration of receiving order), s. 7 (protection of purchaser without notice).

(2) For the purposes of this section, no voluntary disposition, whenever made, shall be deemed to have been made with intent to defraud by reason only that a subsequent conveyance for valuable consideration was made, if such subsequent conveyance was made after the twenty-eighth day of June, eighteen hundred and ninety-three.

Voluntary Conveyances A., 1893.

This sub-s. reproduces the Voluntary Conveyances A., 1893.

Law before 29th June, 1893.

If before 29th June, 1893, a voluntary conveyance of land was followed by a conveyance for value of the same land, even if the purchaser for value had notice of the voluntary conveyance, it was void: *Doe d. Newman* v. *Rusham*, 17 Q. B. 723. This did not apply to gifts to charities: *Ramsay* v. *Gilchrist*, 1892, A. C. 412; but it invalidated a post-nuptial provision for a wife or child: *Clarke* v. *Wright*, 6 H. & N. 870.

Gifts to charities not deemed fraudulent.

The object of the Act of 1893 was, as respects voluntary conveyances, to assimilate the law affecting land to that of personal estate.

Acquisitions of reversions at an under value.

174.—(1) No acquisition made in good faith, without fraud or unfair dealing, of any reversionary interest in real or personal property, for money or money's worth, shall be liable to be opened or set aside merely on the ground of under value.

In this subsection "reversionary interest" includes an expectancy or possibility.

Sales of Reversions A., 1867.

This s. reproduces the Sales of Reversions A., 1867, as to which see Withers, 160-2.

"Expectancy or possibility."

The definition removes the doubt whether "reversionary interest" included an expectancy or possibility; as to the distinction between an expectancy and a reversionary interest: Withers, 27-9.

Object of s.

The object of the s. was to enable reversions to be sold otherwise than by auction. A purchaser still has to prove that there was no fraud or unfair dealing. To show that there has not been any unfair dealing, the questions as to the adequacy of the price, whether the vendor was separately advised by a solicitor and an actuary, whether improper advantage was taken of his position, and whether the transaction was by arrangement kept secret from the trustee, may still be very material.

(2) This section does not affect the jurisdiction of the court to set aside or modify unconscionable bargains.

Power to set aside unconscionable bargains.

For the reasons for holding a bargain unconscionable: Withers, 161; an unfair dealing is "unconscionable."

Part X.

Wills.

Contingent and future testamentary gifts to carry the intermediate income.

175.—(1) A contingent or future specific devise or bequest of property, whether real or personal, and a contingent residuary devise of freehold land, and a specific or residuary devise of freehold land to trustees upon trust for persons whose interests are contingent or executory shall, subject to the statutory provisions relating to accumulations, carry the intermediate income of that property from the death of the testator, except so far as such income, or any part thereof, may be otherwise expressly disposed of.

(2) This section applies only to wills coming into operation after the commencement of this Act.

This s. is new.

Statutory provisions relating to accumulations.

"Statutory provisions relating to accumulations": ss. 164-6, *sup.*; T. A., 1925, s. 31 (minorities and contingent interests carrying the intermediate income); *ib.* sub-s. (3).

"Income": s. 205 (1) (xix), *inf.*, includes rents and profits.

Specific devise and bequest.

A present devise, being specific, carries the income from the death of the testator, and the same rule applies to a specific bequest, if vested.

Future devise or bequest.

A future devise or bequest, whether residuary or not, or a contingent specific bequest (except where the legatee was entitled to interest on a general legacy from the death of the testator) did not, before 1926, carry the intermediate income, which fell into residue or went as undisposed of: Theobald, 7th ed., 180 *et seq.*

Devise contingent on birth of devisee.

Where before 1926 a devise was contingent on the birth of the devisee, the intermediate income went as undisposed of until that event happened: *Richards* v. *R.*, 1860, Jo. 754; *Re Mowlem*, 1874, 18 Eq. 9; see also *Rawlins* v. *R.*, 1796, 2 Cox, 425; *Goodale* v. *Gawthorne*, 1854, 2 Sm. & G. 375.

Devise to members of a class.

Where a devise, before 1926, was to the members of a class who attained twenty-one years, the first to attain that age took the whole of the income, until another member of the class attained that age, and so on: *Re Averill*, 1898, 1 Ch. 523; *Re Walmsley*, 1911, W. N. 139.

But where words were used showing the testator's intention that the income should not be separated from the capital, the intermediate income was payable to each member of the class when his share in the capital vested: *Re Stevens*, 1915, 1 Ch. 429.

Property set apart to meet a contingent interest.

Property directed to be set apart for the benefit of a beneficiary, taking a contingent interest, carried the intermediate income from the death of the testator, provided that the direction was contained in the will and that the appropriation was not merely made by the executors for purposes of administration: *Re Medlock*, 1886, 55 L. J. Ch. 738; *Re Dickson*, 1885, 29 Ch. D. 331, 334; see also *Re Eyre*, 1917, 1 Ch. 351, where the previous decisions are reviewed; and Theobald, 7th ed., 180 *et seq.*

Power for tenant in tail in possession to dispose of property by specific devise or bequest.

176.—(1) A tenant in tail of full age shall have power to dispose by will, by means of a devise or bequest referring specifically either to the property or to the instrument under which it was acquired or to entailed property generally—

(a) of all property of which he is tenant in tail in possession at his death; and

(b) of money (including the proceeds of property directed to be sold) subject to be invested in the purchase of property, of which if it had been so invested he would have been tenant in tail in possession at his death;

in like manner as if, after barring the entail, he had been tenant in fee simple or absolute owner thereof for an equitable interest at his death, but, subject to and in default of any such disposition by will, such property shall devolve in the same manner as if this section had not been passed.

Creation and devolution of entailed interests after 1926.

As to the creation and devolution of entailed interests, see s. 130, *sup.*, and notes thereto; see also Ad. of E. A., 1925, s. 3 (2).

Object of s.

This s. is new. The object is to place the testator, who is entitled to an entailed interest in possession and complies with the requirements of this s., in the same position as if he had disentailed the property; if he could not, without the consent of a protector, have barred the entail, then he will not have power under this s. to dispose of the property. The s. confers an equitable power of appointment; reference must, however, be made either to the property, or to the settlement, or to entailed property, but no limits are imposed on the class of persons capable of taking under the appointment; hence the power is a limited general power, rather than a special power.

Limited general power.

(2) This section applies to entailed interests authorised to be created by this Act as well as to estates tail created before the commencement of this Act, but does not extend to a tenant in tail who is by statute restrained from barring or defeating his estate tail, whether the land or property in respect whereof he is so restrained was purchased with money provided by Parliament in consideration of public services or not, or to a tenant in tail after possibility of issue extinct, and does not render any interest which is not disposed of by the will of the tenant in tail liable for his debts or other liabilities.

Unbarrable entails.

The F. & R. A., 1833, does not apply to estates tail granted by the Crown for public services: *ib.* s. 18; the reversion remains vested in the Crown. Nor can Parliamentary entails be barred. Title can, however, be made *inter vivos* to the settled land: S. L. A., 1925, ss. 20 (1) (i), 23 (2).

Possibility of issue extinct.

A tenant in tail after possibility of issue extinct cannot bar the entail: F. & R. A., 1833, s. 18; but he has the powers of a tenant for life: S. L. A.,

1925, s. 20 (1) (i), and is not impeachable for waste; and see Goodeve, R. P., 5th ed., 80-1.

Assets for judgment and Crown debts.

A judgment debt still binds an entailed interest if the tenant in tail could have barred the entail without the assent of another person: s. 195, *inf.*; but it does not (whether obtained on behalf of the Crown or otherwise) create any charge on the land till the writ or order is registered: *ib.*, sub-s. (3); nor does a Crown debt create any charge on land till the writ or order is registered: *ib.*, sub-s. (4); though under 33 Hen. 8, c. 39, s. 52, a judgment, recognisance, obligation or other specialty of the Crown bound the land of a deceased tenant in tail.

Insolvent estate.

If the debtor dies after 1925, his real and personal estate, if he was insolvent, is administered under Pt. I. of the 1st Sch. to the Ad. of E. A., 1925, which applies the bankruptcy rules: see Bkcy. A., 1914, s. 33 (no priority given to the Crown), s. 37 (relation back of title), s. 38 (property divisible among creditors, giving power to the trustee to execute disentailing assurances which the debtor could have executed for his own benefit), s. 130 (administration orders in bankruptcy of insolvent's estate), s. 151 (provisions of the Act as to remedies against the property of the debtor and priorities of debts bind the Crown).

Rights of the Crown.

Semble, the official receiver cannot disentail after the death of the insolvent tenant in tail; hence the Crown loses any right against the entailed interest of the deceased, unless in his lifetime a writ or order was registered against him under L. C. A., 1925, s. 6, so as to bring the charge within s. 195, *inf.*

Devolution of entailed interest on death.

Under s. 130 (4), *sup.*, an entailed interest, in default of a disentailing assurance or the exercise of the power conferred by this s., devolves on the heirs of the body, &c., and this s. binds the Crown: s. 208, *inf.*

An entailed interest not disposed of under this s. is deemed an interest ceasing on the death of the tenant in tail, hence does not pass to the personal representatives: Ad. of E. A., 1925, s. 3 (3).

What are assets.

Under Ad. of E. A., 1925, s. 34 (which binds the Crown: *ib.*, s. 57), it is clear that the assets of a deceased person consist of his beneficial interest in his real and personal estate or which he appoints by will under a general power, including the power conferred by this s. But s. 34 takes effect without prejudice to the rights of incumbrancers.

(3) In this section "tenant in tail" includes an owner of a base fee in possession who has power to enlarge the base fee into a fee simple without the concurrence of any other person.

Power to enlarge a base fee.

Under F. & R. A., 1833, s. 19, the owner of a base fee may enlarge it into a fee simple as soon as, had the entail not been barred, he would have been tenant in tail in possession.

(4) This section only applies to wills executed after the commencement of this Act, or confirmed or republished by codicil executed after such commencement.

Not retrospective.

The fact that the testator dies after 1925 is not sufficient to bring the s. into force.

Wills in contemplation of marriage. 7 Will. 4 & 1 Vict. c. 26.

177.—(1) A will expressed to be made in contemplation of a marriage shall, notwithstanding anything in section eighteen of the Wills Act, 1837, or any other

statutory provision or rule of law to the contrary, not be revoked by the solemnisation of the marriage contemplated.

(2) This section only applies to wills made after the commencement of this Act.

Marriage does not revoke wills made after 1925.

This s. is new, and overrules the decisions in *In b. Cadywold,* 1858, 1 Sw. & Tr. 34; *Otway* v. *Sadleir,* 1858, 4 Ir. Jur. N. S. 97, with respect to wills made after the 31st December, 1925, if the s. is complied with. The will should be made to take effect only if the marriage is solemnised.

Power for persons having no issue to dispose of real estate by will.

178. Section three of the Wills Act, 1837, shall (without prejudice to the rights and interests of a personal representative) authorise and be deemed always to have authorised any person to dispose of real property or chattels real by will notwithstanding that by reason of illegitimacy or otherwise he did not leave an heir or next of kin surviving him.

Wills of bastards.

This s. is new. It removes the doubt whether a bastard could dispose of real estate and so defeat the right of the lord to an escheat; but see Theobald, 7th ed., 85.

Rights of personal representative.

"Without prejudice to the rights and interests of a personal representative": see Ad. of E. A., 1925, ss. 1—3, replacing the vesting provisions in Pt. I. of the L. T. A., 1897; only beneficial interests pass by a devise or bequest: L. P. (Amend.) A., 1924, 9th Sch., para. 3.

Prescribed forms for reference in wills.

179. The Lord Chancellor may from time to time prescribe and publish forms to which a testator may refer in his will, and give directions as to the manner in which they may be referred to, but, unless so referred to, such forms shall not be deemed to be incorporated in a will.

Lord Chancellor's forms.

For the Statutory Will Forms, 1925, see Appendix No. VII., Vol. II.; these in the main are confined to wills relating to personal estate or real estate devised on trust for sale.

Part XI.

Miscellaneous.

Miscellaneous.

Provisions as to corporations.

180.—(1) Where either after or before the commencement of this Act any property or any interest therein is or has been vested in a corporation sole (including the Crown), the same shall, unless and until otherwise disposed of by the corporation, pass and devolve to and vest in and be deemed always to have passed and

devolved to or vested in the successors from time to time of such corporation.

This s. is new. "Property" includes a thing in action: s. 205 (1) (xx); and thus includes the benefit of a contract. "Disposed of": *ib.* (ii).

Leaseholds of a corporation sole.

Before 1926, leaseholds could not be acquired by a corporation sole in his corporate capacity: *Arundell's Case,* 1615, 1 Roll. Abr. 515; see also 4 Co. Rep. 64b, 65b, note (*a*); hence a term limited to a corporation sole passed on his death to his personal representatives for the benefit of the corporation, and not to his successors: Co. Litt. 46b; Norton, Deeds, 299. As to the similar rule as to the benefit of a contract, see *Howley* v. *Knight,* 1849, 14 Q. B. 240; *Byrd* v. *Wilford,* 1593, 2 Cro. Eliz. 464 (City Chamberlain).

"Has been vested in a corporation sole."

"Has been vested in a corporation sole": thus if leaseholds have, before 1926, of necessity been vested in the corporator sole in his personal capacity, still if they were vested in him for the benefit of the corporation and not for his individual purposes, this s. will apply, and on his death they will vest in his successors. If his corporate designation is used in the demise or disposition, that will be evidence to show that the corporation was to take.

Postmaster-General.

The principal object of the sub-s. is to confirm the title of the Postmaster-General, who for many years past has been expressed to acquire leasehold interests of various descriptions.

Licences in mortmain.

Similarly, the s. makes leaseholds acquired after 1925 pass to the successors of the corporator sole; the s. does not, however, render unnecessary a licence in mortmain where the corporation has no statutory power to acquire or hold land: see *Power* v. *Banks,* 1901, 2 Ch. 487, 495.

Devolution on death.

Further, under Ad. of E. A., 1925, s. 3 (5), on the death of a corporator sole "his interest" in the corporation's real and personal estate "shall devolve to his successor"; this must apply though he took in his individual capacity as trustee for the corporation.

Freeholds.

The fee simple in land could always be granted to a corporation sole, provided the grant was made to the corporation and his successors. The omission of the word "successors" resulted in the person holding office at the date of grant obtaining a life estate in his personal capacity: Co. Litt. 8b, 94b; but the word is no longer required: s. 60 (2), *sup.*

Grants to the Crown.

A grant to the Crown (by deed enrolled) did not require to be limited to the successors, as the Crown never dies: Co. Litt. 9b. Similarly, a grant to a bishop "in free alms" passed the fee simple without the use of the word "successors," but this exception is not now of importance.

(2) Where either after or before the commencement of this Act there is or has been a vacancy in the office of a corporation sole or in the office of the head of a corporation aggregate (in any case in which the vacancy affects the status or powers of the corporation) at the time when, if there had been no vacancy, any interest in or charge on property would have been acquired by the corporation, such interest shall notwithstanding such vacancy vest and be deemed to have vested in the successor to such office on his appointment as a corporation sole, or in the corporation aggregate (as the case may be), but without prejudice to the right of such successor, or of the corporation aggregate after the

appointment of its head officer, to disclaim that interest or charge.

Acquisition during vacancy confirmed.

A grant of lands to a corporation sole was formerly void unless the corporator to whom the grant was made was in office at the date of the grant, or the grant was by way of remainder and the vacancy was filled during the continuance of the particular estate: *Holden* v. *Smallbrooke*, 1668, Vaugh. 187, 199; Grant on Corporations, 632; Norton, Deeds, 302; and a similar rule applied to grants to a corporation aggregate having a head, such as a mayor: *ib.*; Grant, 111; Co. Litt. 264a.

This s. makes the grant valid, unless and until disclaimed.

(3) Any contract or other transaction expressed or purported to be made with a corporation sole, or any appointment of a corporation sole as a custodian or other trustee or as a personal representative, at a time (either after or before the commencement of this Act) when there was a vacancy in the office, shall on the vacancy being filled take effect and be deemed to have taken effect as if the vacancy had been filled before the contract, transaction or appointment was expressed to be made or was capable of taking effect, and on the appointment of a successor shall be capable of being enforced, accepted, disclaimed or renounced by him.

Other transactions during vacancy.

As to the devolution of the benefit of a contract made with a corporation sole, see sub-s. (1), *sup.*

Public Trustee.

This s. removes any doubt as to the position and powers of the Public Trustee, who is a corporation sole: P. T. A., 1906, s. 1 (2); he has power to hold land or other trust property of any nature: *Re Leslie*, 1911, 1 Ch. 611, 617.

Dissolution of a corporation.

181. Where, by reason of the dissolution of a corporation either before or after the commencement of this Act, a legal estate in any property has determined, the court may by order create a corresponding estate and vest the same in the person who would have been entitled to the estate which determined had it remained a subsisting estate.

This s. is new. "Legal estate" in this s. is used in the wide sense, for it applies to any property. As to fees simple: s. 7 (2), *sup.*

Vesting orders.

As to the effect of a vesting order by the court, see s. 9, *sup.* See also as to vesting orders on the dissolution of a corporation, T. A., 1925, ss. 44 (ii) (c), 51 (1) (ii) (c).

Cesser of term for benefit of lessor.

As to the determination of a term vested in a corporation by the dissolution thereof, see *Hastings Corpn.* v. *Letton*, 1908, 1 K. B. 378; Gray, Perpetuities, 3rd ed., paras. 49—51. Freeholds revert to the grantor, pure personalty goes to the Crown.

Protection of solicitor and trustees adopting Act.

182.—(1) The powers given by this Act to any person, and the covenants, provisions, stipulations, and words which under this Act are to be deemed to be included or

implied in any instrument, or are by this Act made applicable to any contract for sale or other transaction, are and shall be deemed in law proper powers, covenants, provisions, stipulations, and words, to be given by or to be contained in any such instrument, or to be adopted in connexion with, or applied to, any such contract or transaction, and a solicitor shall not be deemed guilty of neglect or breach of duty, or become in any way liable, by reason of his omitting, in good faith, in any such instrument, or in connexion with any such contract or transaction, to negative the giving, inclusion, implication, or application of any of those powers, covenants, provisions, stipulations, or words, or to insert or apply any others in place thereof, in any case where the provisions of this Act would allow of his doing so.

(2) But, save as expressly provided by this Act, nothing in this Act shall be taken to imply that the insertion in any such instrument, or the adoption in connexion with, or the application to, any contract or transaction, of any further or other powers, covenants, provisions, stipulations, or words is improper.

(3) Where the solicitor is acting for trustees, executors, or other persons in a fiduciary position, those persons shall also be protected in like manner.

(4) Where such persons are acting without a solicitor, they shall also be protected in like manner.

This s. replaces C. A., 1881, s. 66, with merely verbal amendments; it was made applicable to this Act by the L. P. (Amend.) A., 1924.

Solicitor's responsibility in reference to adoption of the Act.

Under this s. a solicitor adopting the Act and framing his drafts so as to incorporate the forms contained in the Act, or so as not to exclude any provisions of the Act, incurs no responsibility, those forms and provisions being by this s. declared proper. The same holds as to a trustee or executor. If he uses other forms his responsibility remains the same as before the Act.

As to the protection to a solicitor as respects showing title to legal estates, see s. 10, *sup.*

"Save as expressly provided."

The opening words of sub-s. (2) are new; they refer, *e.g.*, to the restrictions as to the creation of mortgages (ss. 85-6), as to undivided shares (ss. 84-6; 1st Sch., Pt. IV.), and to the inalienable rights of a purchaser: ss. 42, 125.

Fraudulent concealment of documents and falsification of pedigrees.

183.—(1) Any person disposing of property or any interest therein for money or money's worth to a purchaser, or the solicitor or other agent of such person, who—

(a) conceals from the purchaser any instrument or incumbrance material to the title; or

(b) falsifies any pedigree upon which the title may depend in order to induce the purchaser to accept the title offered or produced;

with intent in any of such cases to defraud, is guilty of a misdemeanour punishable by fine, or by imprisonment for a term not exceeding two years, or by both.

This s. reproduces the L. P. (Amend.) A., 1859, s. 24, and L. P. (Amend.) A., 1860, s. 8; but is qualified in regard to making titles to legal estates by s. 10, *sup.*

Definitions. "Disposing of": s. 205 (1) (ii); "property": *ib.* (xx); "purchaser": *ib.* (xxi); "instrument": *ib.* (viii); "incumbrance": *ib.* (vii).

"With intent . . . to defraud." In *Smith* v. *Robinson*, 1879, 13 Ch. D. 148, 151, it was questioned whether a solicitor could be liable where the incumbrance was prior to the commencement of title, under agreed conditions of sale. It is submitted that the solicitor would be liable if the intent to defraud were established.

"Falsifies any pedigree." This s. relates to property generally, not merely to land. Where title is being shown to a "legal estate," matters of pedigree do not come on the title, save in cases within S. L. A., 1925, s. 110 (2) (i), (ii), (iii), where counsel's certificate is not given under the General Conditions of 1925.

(2) Any such person or his solicitor or agent is also liable to an action for damages by the purchaser or the persons deriving title under him for any loss sustained by reason of—

(a) the concealment of the instrument or incumbrance; or

(b) any claim made by a person under such pedigree whose right was concealed by such falsification as aforesaid.

Liability in damages. No leave of the Att.-Gen. under sub-s. (4) is required to commence proceedings to enforce the civil liability.

(3) In estimating damages, where the property or any interest therein is recovered from the purchaser or the persons deriving title under him, regard shall be had to any expenditure by him or them in improvements of any land.

Allowance for improvements on land. It appears that the allowance extends to the full amount of expenditure, and not merely to the benefit accruing thereby.

(4) No prosecution for any offence under this section shall be commenced without the leave of the Attorney-General.

(5) Before leave to prosecute is granted there shall be given to the person intended to be prosecuted such

notice of the application for leave to prosecute as the Attorney-General may direct.

The power conferred on the Solicitor-General by the L. P. (Amend.) A., 1859, to act in case of vacancy in the office of the Attorney-General, is omitted as unnecessary. Solicitor-General no longer has power to act.

184. In all cases where, after the commencement of this Act, two or more persons have died in circumstances rendering it uncertain which of them survived the other or others, such deaths shall (subject to any order of the court), for all purposes affecting the title to property, be presumed to have occurred in order of seniority, and accordingly the younger shall be deemed to have survived the elder. Presumption of survivorship in regard to claims to property.

This s. is new, and removes the difficulties shown by *Wing* v. *Angrave,* 1860, 8 H. L. C. 183; *Re Alston,* 1892, P. 142; *In b. Beynon,* 1901, P. 141. Commorientes.

"Subject to any order of the court," it is still open for the court to hold as a fact that the deaths were simultaneous, or occurred in any particular order.

185. There is no merger by operation of law only of any estate the beneficial interest in which would not be deemed to be merged or extinguished in equity. Merger.

This s. replaces Jud. A., 1873, s. 25 (4).

Before that Act, merger took effect at law without regard to the intention of the parties; though the intention might be considered in a case of doubtful construction: *Burton* v. *Barclay,* 1831, 7 Bing. 745. Merger at law before 1875.

Under this s., a less estate is not merged in a greater, and a charge upon property is not merged if there is an expressed or presumed intention that it is to be kept on foot: *Capital & Counties Bank* v. *Rhodes,* 1903, 1 Ch. 631. Merger under this s.

If the intention is not expressed, the court inquires whether merger is for the benefit of the person in whom the two estates, or the property charged, is vested: *Chambers* v. *Kingham,* 1878, 10 Ch. D. 743; *Ingle* v. *Vaughan Jenkins,* 1900, 2 Ch. 368; *Re Fletcher,* 1917, 1 Ch. 339 (effect of subsequent dealings to show intention). Rule where intention not expressed.

If it is indifferent whether a charge subsists or not, the presumption of merger will prevail: *Re Toppin,* 1915, 1 I. R. 330.

The presumption is against merger when a tenant for life or other owner of a partial interest (not being a tenant in tail) pays off a charge: *Lord Gifford* v. *Lord Fitzhardinge,* 1899, 2 Ch. 32; *Williams* v. *Williams-Wynn,* 1915, 84 L. J. Ch. 801; this is recognised in s. 116, *sup.* Limited owners.

Generally as to merger of charges, see 21 Hals. L. of E. 318 *et seq.* Merger of mortgage terms.

Where a term is expressly merged, the compulsory provisions as to registration do not apply to the term: L. R. A., 1925, s. 123 (3). The title to an interest which is merged or extinguished need not be previously registered: *ib.,* s. 144 (1) (xxix) and rules thereunder. Registered land.

186. All statutory and other rights of pre-emption affecting a legal estate shall be and be deemed always to Rights of pre-emption capable of release.

have been capable of release, and unless released shall remain in force as equitable interests only.

This s. is new.

To be protected as equitable interests.

Rights of pre-emption created before 1926, or acquired by conveyance after 1925, may be registered as land charges: L. C. A., 1925, s. 10 (1), Class C. (iv); if not so protected, a purchaser takes free therefrom: *ib.*, ss. 13—14.

Releases by tenant for life, &c.

A tenant for life with the consent of the S. L. A., trustees may release rights of pre-emption over other land held for the benefit of the settled land: S. L. A., 1925, s. 58 (2); it follows that trustees for sale (s. 28, *sup.*) and personal representatives (Ad. of E. A., 1925, s. 39) can also release such rights.

Adjoining owners, whether bound by release.

It is conceived that if a vendor releases to the promoters of the undertaking the rights of pre-emption conferred by Lands Clauses A., 1845, s. 128, this would not only bind his successors in title to the land from which the property was severed, but also the adjoining owners, whose rights only accrue if the successors refuse to purchase or cannot be found.

Lessor's and lessee's rights of pre-emption to purchase a reversion or to renew a lease.

As to rights of pre-emption as between lessor and lessee: s. 6, *sup.*, but notwithstanding that s. the person given the right of pre-emption should register a land charge. Similarly, options to purchase and rights to a renewal of a lease should be protected by a land charge.

Legal easements.

187.—(1) Where an easement, right or privilege for a legal estate is created, it shall enure for the benefit of the land to which it is intended to be annexed.

(2) Nothing in this Act affects the right of a person to acquire, hold or exercise an easement, right or privilege over or in relation to land for a legal estate in common with any other person, or the power of creating or conveying such an easement right or privilege.

Legal easements must be appurtenant.

This s. is new. Sub-s. (1) shows that in order to create a legal easement, &c. (s. 1 (2) (a), *sup.*), it must be made appurtenant to some land. A so-called easement, &c., in gross (Gale, 10th ed., 11 *et seq.*) is treated as being on the same footing as a personal licence, and so far as it creates an interest in land (*cf. Hurst* v. *Picture Theatres,* 1915, 1 K. B. 1), will only take effect as an equitable interest. The sub-s. does not enlarge the class of interests which can be created as legal "easements, rights or privileges."

Easements may be held in common.

Though land (which includes an easement: s. 205 (1) (ix)) cannot, save behind a trust for sale, be held by tenants in common: ss. 34-6, 1st Sch., Pt. IV.; S. L. A., 1925, s. 36, there is no objection to an easement being exercised in common; thus, a road through Blackacre may be used not only by the owners of Blackacre, but by owners of dominant tenements in the vicinity. The principle is adopted in regard to party structures by s. 38, *sup.*, and by 1st Sch., Pt. V., *inf.*

No undivided shares in easements.

There is nothing in sub-s. (2) to say that an easement, &c., can be held in undivided shares; it confirms the existing practice of granting easements, &c., so that they may be exercised by the owners of different tenements, and the title of subsisting easements, &c., so held.

Power to direct division of chattels.

188. Where any chattels belong to persons in undivided shares, the persons interested in a moiety or upwards may apply to the court for an order for division of the chattels or any of them, according to a valuation

or otherwise, and the court may make such order and give any consequential directions as it thinks fit.

New jurisdiction.

This s. is new, and gives jurisdiction to order a division in specie of chattels belonging to persons in undivided shares which the court did not possess. It meets practical difficulties where chattels have been bequeathed to a class.

Partnership property.

If the chattels are held as partnership property, the ordinary relief, independently of relief under this s., is an order for sale of the assets as a going concern: *Featherstonhaugh* v. *Fenwick,* 1810, 17 Ves. 298; *Taylor* v. *Neate,* 1888, 39 Ch. D. 538.

Settled chattels.

Personal estate (not being chattels settled as heirlooms) which is entailed can be dealt with as capital money: s. 130 (1), *sup.;* while chattels settled as heirlooms can be sold under S. L. A., 1925, s. 67.

Appropriation and valuation.

As to the power for personal representatives to appropriate property: Ad. of E. A., 1925, s. 41; for the power for trustees and personal representatives to value property: T. A., 1925, s. 22 (3).

Indemnities against rents.

189.—(1) A power of distress given by way of indemnity against a rent or any part thereof payable in respect of any land, or against the breach of any covenant or condition in relation to land, is not and shall not be deemed ever to have been a bill of sale within the meaning of the Bills of Sale Acts, 1878 and 1882, as amended by any subsequent enactment.

Powers of distress and the Bills of Sale Acts.

This sub-s. is new and retrospective. It removes the doubt raised in 1 K. & E., 11th ed., 669, 900; *per contra,* 29 L. Q. R. 340.

"Rent": s. 205 (1) (xxiii).

Remedies when land is exonerated from rentcharge.

This sub-s. is of importance in connexion with the remedies usually conferred when land is to be exonerated from a rentcharge. These remedies may be implied under s. 190 (2), *inf.;* the perpetuity rule does not apply: *ib.* (8); see also s. 162 (1) (a), *sup.*

(2) The benefit of all covenants and powers given by way of indemnity against a rent or any part thereof payable in respect of land, or against the breach of any covenant or condition in relation to land, is and shall be deemed always to have been annexed to the land to which the indemnity is intended to relate, and may be enforced by the estate owner for the time being of the whole or any part of that land, notwithstanding that the benefit may not have been expressly apportioned or assigned to him or to any of his predecessors in title.

Indemnities against rents run with land.

This sub-s. is new and retrospective. First, it annexes the indemnity against rents and breaches of covenants to the land intended to be protected. Secondly, it enables the covenants and powers to be enforced by an "estate owner" (s. 205 (1) (v)) of part of the land to be protected without any apportionment or express agreement.

Implied covenants as to rents.

The benefit of covenants respecting rents implied under s. 77, *sup.*, also run with the land of the covenantee: *ib.*, sub-s. (5).

Redemption and Apportionment of Rents, &c.

Equitable apportionment of rents and remedies for non-payment or breach of covenant.

190.—(1) Where in a conveyance for valuable consideration, other than a mortgage, of part of land which is affected by a rentcharge, such rentcharge or a part thereof is, without the consent of the owner thereof, expressed to be—

(a) charged exclusively on the land conveyed or any part thereof in exoneration of the land retained or other land; or

(b) charged exclusively on the land retained or any part thereof in exoneration of the land conveyed or other land; or

(c) apportioned between the land conveyed or any part thereof, and the land retained by the grantor or any part thereof;

then, without prejudice to the rights of the owner of the rentcharge, such charge or apportionment shall be binding as between the grantor and the grantee under the conveyance and their respective successors in title.

Conveyances charging or apportioning a rentcharge without the consent of the owner.

This s. is new. Sub-s. (1) is declaratory of the law, but S. L. A., 1925, s. 49 (1) (c), gives power for a tenant for life to execute such conveyances, which accordingly can also be made by trustees for sale: s. 28, *sup.*; and by personal representatives: Ad. of E. A., 1925, s. 39. As to mortgagees: sub-s. (5), *inf.*

"Rentcharge": s. 205 (1) (xxiii).

As to implied covenants in conveyances made after 1925, such as mentioned in this sub-s., see s. 77, *sup.*, and 2nd Sch., Pts. VII. and VIII.

Terre tenant.

As to the liability of a mortgagee by demise or other estate owner to the owner of the rentcharge, see *Cundiff* v. *Fitzsimmons*, 1911, 1 K. B. 513; *Pertwee* v. *Townsend*, 1896, 2 Q. B. 129, and note to s. 121 (4), *sup.*

Sales by way of demise.

Though this s., taken with s. 77, removes the main difficulties in selling land at an equitably apportioned rent, it is generally better to effect the sale by a demise for a long term at a new rent equal to an apportioned part of the rentcharge; this leaves the reversion in the vendor, who continues to pay the entire rentcharge.

(2) Where—

(a) any default is made in payment of the whole or part of a rentcharge by the person who, by reason of such charge or apportionment as aforesaid, is liable to pay the same; or

(b) any breach occurs of any of the covenants (other than in the case of an apportionment the covenant to pay the entire rentcharge) or conditions contained in the deed or other document creating the rentcharge, so far as

the same relate to the land retained or conveyed, as the case may be;

the owner for the time being of any other land affected by the entire rentcharge who—

(i) pays or is required to pay the whole or part of the rentcharge which ought to have been paid by the defaulter aforesaid; or

(ii) incurs any costs, damages or expenses by reason of the breach of covenant or condition aforesaid;

may enter into and distrain on the land in respect of which the default or breach is made or occurs, or any part of that land, and dispose according to law of any distress found, and may also take possession of the income of the same land until, by means of such distress and receipt of income or otherwise the whole or part of the rentcharge (charged or apportioned as aforesaid) so unpaid and all costs, damages and expenses incurred by reason of the non-payment thereof or of the breach of the said covenants and conditions, are fully paid or satisfied.

Rights of distress and entry in respect of rentcharge.

Equitable powers.

Limitation Acts.

This s. gives rights usually conferred when the rentcharge cannot be legally apportioned or released.

The right of entry conferred by this s. is not a legal interest, for it is annexed to the land, not to the rentcharge: s. 1 (2) (e), *sup.* The charge can be protected by the registration of a land charge under L. C. A., 1925, s. 10, Class C. (iii).

It is conceived that the time within which the remedies conferred by this sub-s. must be exercised is governed by R. P. L. A., 1874, s. 8, for the sub-s. in effect imposes an equitable charge by way of indemnity. In *Shaw* v. *Crompton,* 1910, 2 K. B. 370, part of the land affected by a head rentcharge was conveyed with a reservation of a new rentcharge, not subject to an apportioned part of the head rentcharge; hence that case came within R. P. L. A., 1874, s. 1.

(3) Where in a conveyance for valuable consideration, other than a mortgage, of part of land comprised in a lease, for the residue of the term or interest created by the lease, the rent reserved by such lease or a part thereof is, without the consent of the lessor, expressed to be—

(a) charged exclusively on the land conveyed or any part thereof in exoneration of the land retained by the assignor or other land; or

(b) charged exclusively on the land retained by the assignor or any part thereof in exoneration of the land conveyed or other land; or

(c) apportioned between the land conveyed or any part thereof and the land retained by the assignor or any part thereof;

then, without prejudice to the rights of the lessor, such charge or apportionment shall be binding as between the assignor and the assignee under the conveyance and their respective successors in title.

Assignments charging or apportioning a rent without the consent of the lessor.

This sub-s. again is declaratory: see note to sub-s. (1), *sup.* "Rent," "lease," "lessor": s. 205 (1) (xxiii).

Implied covenants.

As to implied covenants on a conveyance made after 1925, such as mentioned in this sub-s., see s. 77 (2), *sup.*

Sales by sub-demise.

Though this s. removes the main difficulties on a sale of part of land comprised in a lease at an equitably apportioned rent, it is better generally to continue the practice of effecting the sale by sub-demise; this method can be adopted by trustees, &c.: *Re Judd & Poland*, 1906, 1 Ch. 684.

(4) Where—

(a) any default is made in payment of the whole or part of a rent by the person who, by reason of such charge or apportionment as aforesaid, is liable to pay the same; or

(b) any breach occurs of any of the lessee's covenants (other than in the case of an apportionment the covenant to pay the entire rent) or conditions contained in the lease, so far as the same relate to the land retained or conveyed, as the case may be;

the lessee for the time being of any other land comprised in the lease, in whom, as respects that land, the residue of the term or interest created by the lease is vested, who—

(i) pays or is required to pay the whole or part of the rent which ought to have been paid by the defaulter aforesaid; or

(ii) incurs any costs, damages or expenses by reason of the breach of covenant or condition aforesaid;

may enter into and distrain on the land comprised in the lease in respect of which the default or breach is made or occurs, or any part of that land, and dispose according to law of any distress found, and may also take possession of the income of the same land until (so long as the term or interest created by the lease is subsisting) by means of such distress and receipt of income or otherwise, the whole or part of the rent (charged or apportioned as

aforesaid) so unpaid and all costs, damages and expenses incurred by reason of the non-payment thereof or of the breach of the said covenants and conditions, are fully paid or satisfied.

Rights of distress and entry in respect of leaseholds.

This sub-s. corresponds with sub-s. (2) (see notes thereto), but relates to rents reserved by a lease instead of a rentcharge.

The remedies create equitable charges; no new rent is created.

(5) The remedies conferred by this section take effect so far only as they might have been conferred by the conveyance whereby the rent or any part thereof is expressed to be charged or apportioned as aforesaid, but a trustee, personal representative, mortgagee or other person in a fiduciary position has, and shall be deemed always to have had, power to confer the same or like remedies.

Power for trustees and mortgagees to confer the remedies.

"Conveyance": s. 205 (1) (ii). "Person in a fiduciary position" includes a tenant for life: S. L. A., 1925, ss. 16, 107.

This sub-s. removes any doubt whether trustees, &c., had or have a right to carry out the transactions referred to in this s.: *cf. Re Judd & Poland*, 1906, 1 Ch. 684. It is of importance that, in the North of England and in Bristol, a mortgagee should be able to convey subject to an equitably apportioned rent. The restriction in s. 89 (6) is confined to leasehold reversions; it has no bearing on conveyances of freeholds subject to a part of a rentcharge.

(6) This section applies only if and so far as a contrary intention is not expressed in the conveyance whereby the rent or any part thereof is expressed to be charged or apportioned as aforesaid, and takes effect subject to the terms of that conveyance and to the provisions therein contained.

Contrary intention.

See also last sub-s., under which the remedies take effect as if conferred by the conveyance.

(7) The remedies conferred by this section apply only where the conveyance whereby the rent or any part thereof is expressed to be charged or apportioned is made after the commencement of this Act, and do not apply where the rent is charged exclusively as aforesaid or legally apportioned with the consent of the owner or lessor.

Not retrospective.

Though the s. is not retrospective in the sense that the remedies are not implied in conveyances made before 1926, this does not affect the declaration as to the powers of trustees, &c., in sub-s. (5), or as to the perpetuity rule in sub-s. (8).

Legal apportionment.

The remedies are not required where the rentcharge or rent service has been exclusively charged on the part of the land in question or legally apportioned with the consent of the owner of the rent.

(8) The rule of law relating to perpetuities does not affect the powers or remedies conferred by this section or any like powers or remedies expressly conferred, before or after the commencement of this Act, by an instrument.

Perpetuity rule does not apply to remedies.

This sub-s. supplements s. 162 (1) (a), *sup.* Compare the similar declaration in s. 121 (6) respecting the remedies for the recovery of rentcharges.

"Instrument" does not include an Act of Parliament unless it creates a settlement: s. 205 (1) (viii), *inf.*; but statutory powers would of necessity be valid.

Redemption and apportionment of rents.

191.—(1) Where there is a rent being either—

(a) a quit rent, chief rent or other annual or periodical sum issuing out of land; or

(b) a rent reserved on a sale, or made payable under a grant or licence (not operating as an agreement for a lease or tenancy) for building purposes; or

(c) a compensation rentcharge created as the consideration for the extinguishment of manorial incidents;

the Minister shall at any time, on the requisition of the owner of the land or of any person interested therein, certify the amount of money in consideration whereof the rent may be redeemed.

Where the rent is not perpetual the Minister may authorise the purchase of a Government annuity of an amount equal to the rent, payable during the residue of the period for which the rent would have been payable, in such names as he may think fit, and give directions as to the payment of the annuity, and the amount required to purchase that annuity shall be the redemption money.

This s. reproduces C. A., 1881, s. 45, with amendments to include rentcharges created on sales and compensation rentcharges.

Quit rents and other manorial incidents.

Quit rents and other manorial incidents, whether affecting enfranchised land or other land, will ultimately be extinguished under Pt. VI. of the L. P. A., 1922: see ss. 138 (1) and 140; see also S. L. A., 1925, s. 62.

As to compensation rentcharges created on the extinguishment of manorial incidents: L. P. A., 1922, ss. 138 (5) (i), (6); 139 (1) (v). For additional powers to redeem compensation rentcharges: L. P. A., 1922, s. 139 (3).

Rents either perpetual or for a term of years absolute.

Primarily the s. is required for the redemption of legal rentcharges: s. 1 (2) (b); equitable rentcharges can generally be over-reached under S. L. A., 1925, or under a trust for sale: s. 2, *sup.*, without arranging for redemption.

Annual sums charged on land, whether created by statute or otherwise, can also be cleared by payment into court under s. 50, *sup.*

The definition of "rent" in s. 205 (1) (xxiii) is qualified for the purposes of this s.; see also sub-s. (12), *inf.*, which makes it clear that the s. does not apply to rent reserved by a lease or tenancy or to tithe rentcharge.

Not applicable to rent reserved by a lease, or to tithe rentcharge.

"Minister": s. 205 (1) (xv); as to appeals from him: sub-s. (10), *inf.*; the application must be in writing: sub-s. (8).

The provision relating to the purchase of a Government annuity is new; it is consequential on the s. being made applicable to terminable rents.

Government annuities.

(2) Where the rent is perpetual and was reserved on a sale, or was made payable under a grant or licence for building purposes, the redemption money shall be such sum as would (according to the average price, at the date of redemption, of such Government securities as may for the time being be prescribed by the Treasury) purchase sufficient of such Government securities to yield annual dividends equal to the amount of the yearly rent redeemed.

For particulars of the Government securities prescribed by the Treasury, see Appendix No. VIII., Vol. II.

Redemption money where rent is perpetual.

Capital money may be applied in discharging or redeeming incumbrances, including Crown rents, chief rents and quit rents: S. L. A., 1925, s. 73 (1) (ii); also in redeeming a compensation rentcharge: *ib.* (viii); or an improvement rentcharge: *ib.* (xiii). It follows that money arising under a trust for sale may be similarly applied: s. 28, *sup.*; while personal representatives may apply the personal estate of the deceased for the same purpose, provided this would not alter beneficial interests: Ad. of E. A., 1925, s. 39.

Application of capital money, and proceeds of sale, &c.

(3) Where the person entitled to the rent is absolutely entitled thereto in fee simple in possession, or is empowered to dispose thereof absolutely, or to give an absolute discharge for the capital value thereof, the owner of the land, or any person interested therein, may, after serving one month's notice on the person entitled to the rent, pay or tender to that person the amount certified by the Minister.

The Minister acts under this s. where the rent is settled land: see sub-s. (11), *inf.* The tenant for life or statutory owners are entitled to dispose thereof absolutely, and the S. L. A. trustees are entitled to give a discharge for the capital value. The notice must be given to the tenant for life and to the trustees. In the case of a trust for sale notice must be given to the trustees alone, unless the consent of any person to a sale is requisite. There must be two trustees at least to receive the money paid or tendered, unless the trustee is a trust corporation: s. 27 (2), *sup.*; S. L. A., 1925, s. 94; but for cases where there are not two trustees, see sub-s. (4), *inf.* Trustees for sale have the powers of a tenant for life: s. 28, *sup.*; so also have personal representatives: Ad. of E. A., 1925, s. 39.

Rents settled or held on trust for sale.

Commissioners of Sewers are "absolutely entitled . . . in fee simple," though their holding of the rent is subject to their statutory duties under a local Act: *Re Caldicot*, 1920, 2 Ch. 463.

Commissioners of Sewers.

As to regulations respecting notices under this sub-s., see s. 196, *inf.*

Notice.

(4) If the Minister is satisfied—

(a) that any person who has been in receipt of a rent, or claims to be entitled thereto, is unable or unwilling to prove his title either to dispose thereof absolutely, or to give an absolute discharge for the capital value thereof, or neglects to apply to any competent body or person for any requisite order or consent; or

(b) that a person entitled to the rent or any part thereof cannot be found or ascertained; or

(c) that by reason of complications in the title to the rent, or the want of two or more trustees, or for any other reason a tender of the redemption money cannot be effected, or cannot be effected without incurring or involving unreasonable cost or delay;

the Minister may authorise the owner or other person interested in the land affected by the rent to pay the amount of the redemption money certified by the Minister or the Government annuity into court, to an account entitled in the matter of the rent and of the land affected.

Payment into court.

This sub-s. enables redemption to be effected, in spite of difficulties in title.

"Neglect to apply to any competent authority, &c.," *e.g.*, where charity trustees refuse to apply to the Charity Commissioners or to the Board of Education for an order to sell the rent, or where trustees for sale refuse to apply to a person at whose request the trust for sale is exercisable, or where a tenant for life refuses to apply to the court for the appointment of S. L. A. trustees.

"The want of two or more trustees": see s. 27, *sup.*, and S. L. A., 1925, s. 94.

(5) On proof to the Minister that such payment (whether into court or otherwise) or tender has been made, he shall certify that the rent is redeemed under this Act; and that certificate shall be final and conclusive, and the land shall be thereby absolutely freed and discharged from the rent.

Certificate of redemption.

The certificate will be part of the title; as to its form, see sub-s. (8), *inf.*

(6) Any person claiming to be interested in the annuity or fund in court, or who would have been interested in the rent had it not been redeemed, may apply to the court for an order giving directions for the payment of the annuity or of the fund in court or any

part thereof, or of the income thereof to the persons entitled to give a receipt therefor, and it shall not be necessary to serve the owner of the land or the Minister with notice of the proceedings.

Payment out of court of redemption money.

The owner of the land is not a necessary party to proceedings for payment out; the title to the rent is alone in question.

(7) Where any person interested in the whole or any part of the land affected by the rent desires to effect a discharge of a part of the land, and the remainder of the land is not exonerated or indemnified from the rent by means of a charge on the aforesaid part, the Minister may, on his application, by a certificate, apportion the rent between the aforesaid part of the land and the remainder of the land affected (regard being had to the security which will be left for the payment of any part of the rent, and to any apportionment which is not binding on the owner of the rent), and any apportioned part of the rent shall be redeemable under this section, and, on such redemption, the part of the land to which the redemption applies shall be discharged from the entire rent.

Apportionment, and redemption of apportioned part of a rent.

This sub-s. is new. It supplements Inclosure A., 1854, ss. 10—14 (apportionment of rents). Compare L. Clauses A., 1845, s. 118.

(8) Every requisition under this section shall be in writing; and every certificate under this section may be in writing, sealed with the seal of the Minister.

(9) Rules may be made by the Minister for regulating proceedings to be taken under this section, and as to the manner in which costs are to be borne by the respective parties.

Rules.

For rules under this s., see Appendix No. VIII., Vol. II.

Costs.

After 1925 the Minister can deal with the matter of costs, save as to payment out of court under sub-s. (6), when he is not served: Redemption of Rent Rules, 1925, r. 6; they will generally be dealt with on the same footing as the expenses incurred in redeeming a mortgage, unless the Minister considers that the conduct of the party not making the application has been unreasonable: *ib.*

(10) All decisions of the Minister made under this section shall (subject only to such appeal to the court as may be prescribed by rules of court) be final.

Rules of court as to appeals.

See R. S. C. (L. of P. and other Acts), 1925, Appendix No. XI., Vol. II.

(11) This section applies whether or not the rent is settled or is held on trust for sale, or on trust for

charitable, ecclesiastical, public or other purposes, or is subject to incumbrances, and whether the rent was created before or after the commencement of this Act.

Extent of s.

See note to sub-s. (3), *sup.* The managing trustees of land (including a rent within this s.) held for charitable, ecclesiastical or public purposes have the statutory powers of a tenant for life: S. L. A., 1925, s. 29; but before a sale they must obtain the requisite order from the Charity Commissioners or Board of Education or the court.

(12) This section does not apply to tithe rentcharge or a charge or other payment redeemable under the Tithe Acts, 1836 to 1918, or to a rent reserved by a lease or tenancy.

Apportionment and redemption of tithe rentcharges.

Apportionment of tithe rentcharge is provided for by Tithe A., 1836, s. 72; Tithe A., 1842, ss. 13 and 14; Tithe A., 1846, s. 13; Tithe A., 1860, ss. 10 to 17. A Tithe Bill is now before Parliament.

As to apportionment of annuities created for redemption of tithe rentcharges, see s. 192, *inf.*, and note thereto.

As to redemption of tithe rentcharge and corn rents: Tithe A., 1846, ss. 1—12; Tithe A., 1860, ss. 31, 32; Tithe A., 1878, ss. 1—6; Tithe A., 1918, ss. 3—10.

Redemption of a terminable annuity.

Semble, no provision is made by the Tithe As. for the redemption of a terminable annuity created for redeeming tithe rentcharge exceeding 2*l.*; hence such annuities can be redeemed under this s.

Capital money can be applied in redeeming a terminable annuity charged under Tithe A., 1918, s. 4: see S. L. A., 1925, s. 73 (1) (xvi).

Apportionment of charges payable for redemption of tithe rentcharge.

17 & 18 Vict. c. 97.

192. An order of apportionment of a charge on land by way of annuity for redemption of tithe rentcharge may be made by the Minister under sections ten to fourteen (inclusive) of the Inclosure Act, 1854, on the application of any person interested, according to the provisions of the Inclosure Acts, 1845 to 1882, in the land charged or any part thereof without the concurrence of any other person:

Provided that the Minister may, in any such case, on the application of any person interested in the annuity, require as a condition of making the order that any apportioned part of the annuity which does not exceed the yearly sum of two pounds shall be redeemed forthwith.

This s. is new; see also to the same effect, Tithe Annuities Apportionment A., 1921, s. 1; L. C. A., 1925, s. 10, Class A.

"Person interested": see Inclosure A., 1845, ss. 16, 20, 147; Inclosure A., 1854, s. 4; 4 Hals. L. of E. 542.

Redemption of terminable annuities.

As to the redemption of terminable annuities exceeding 2*l.* created under Tithe A., 1918, s. 4 (to which this s. relates), see last s.

Registration of land-charge.

Whether the apportionment is made under this s. or the T. A. Apport. A., 1921, s. 1 (which was prepared later, but enacted before this s.), a land charge should be registered when the order is made: L. C. A., 1925, s. 10, Class A. (v).

Commons and Waste Lands.

Rights of the public over commons and waste lands.

193.—(1) Members of the public shall, subject as hereinafter provided, have rights of access for air and exercise to any land which is a metropolitan common within the meaning of the Metropolitan Commons Acts, 1866 to 1898, or manorial waste, or a common, which is wholly or partly situated within a borough or urban district, and to any land which at the commencement of this Act is subject to rights of common and to which this section may from time to time be applied in manner hereinafter provided:

Provided that—

(a) such rights of access shall be subject to any Act, scheme, or provisional order for the regulation of the land, and to any byelaw, regulation or order made thereunder or under any other statutory authority; and

(b) the Minister shall, on the application of any person entitled as lord of the manor or otherwise to the soil of the land, or entitled to any commonable rights affecting the land, impose such limitations on and conditions as to the exercise of the rights of access or as to the extent of the land to be affected as, in the opinion of the Minister, are necessary or desirable for preventing any estate, right or interest of a profitable or beneficial nature in, over, or affecting the land from being injuriously affected, or for protecting any object of historical interest and, where any such limitations or conditions are so imposed, the rights of access shall be subject thereto; and

(c) such rights of access shall not include any right to draw or drive upon the land a carriage, cart, caravan, truck, or other vehicle, or to camp or light any fire thereon; and

(d) the rights of access shall cease to apply—

(i) to any land over which the commonable rights are extinguished under any statutory provision;

(ii) to any land over which the commonable rights are otherwise extinguished if the

council of the county or county borough in which the land is situated by resolution assent to its exclusion from the operation of this section, and the resolution is approved by the Minister.

There is a comma after "common" in the fifth line of the s.: see Corrigenda.

Rights of access.

This s. is new; the object is to give to the public rights of access to commons and waste lands, which they have assumed in defiance of the law, but to regulate those rights by conditions to be imposed by the Minister of Agriculture with a view to securing a reasonable user of the land. For instance, under such regulations, golf courses, cricket pitches, &c., can be protected against improper interference. As to restrictions on buildings and fences interfering with such access, see s. 194, *inf.*

What "commons" are within the s.

Under the Metropolitan Commons A., 1866, s. 34, and Metropolitan Commons A., 1869, s. 2, the term "metropolitan common" means land, within the Metropolitan Police District of 1866, and subject, on 10th August, 1866, to any right of common; it includes land in that district liable to be included (*i.e.*, inclosed) under the Inclosure A., 1845.

Meaning of "a common."

The term "common," under the Commons A., 1876, s. 37, means any land subject to be inclosed under the Inclosure As., 1845 and 1868; and under the Commons A., 1899, s. 15, includes any land subject to be inclosed under the Inclosure As., 1845 to 1882, and any town or village green.

The general meaning of a "common" is land subject to rights of common: Sweet's L. Dic. 167-71.

Manorial waste.

"Manorial waste": the words "which is wholly or partly situated within a borough or urban district" qualifies "manorial waste" as well as "common." It means that part of a manor which is subject to the tenant's rights of common: Sweet, 879.

Extension to other land.

"Applied in manner hereinafter provided": sub-s. (2).

Existing scheme.

"Scheme": as to the validity and effect of schemes, see *Mitcham Common Conservators* v. *Cox*, 1911, 2 K. B. 854; *Harris* v. *Harrison*, 1914, 111 L. T. 534.

Vehicles forbidden.

As to penalties for driving vehicles, &c., see sub-s. (4); a vehicle would include a motor.

Horses.

Whether a horse could be ridden, as opposed to driven, over the land will depend on the regulations.

(2) The lord of the manor or other person entitled to the soil of any land subject to rights of common may by deed, revocable or irrevocable, declare that this section shall apply to the land, and upon such deed being deposited with the Minister the land shall, so long as the deed remains operative, be land to which this section applies.

Revocable deed of dedication.

It is conceived that this is not an assurance within the Mortmain and Charitable Uses A., 1888, s. 4; it does not pass any estate in the land, and may be revoked.

The object of bringing land (not within a borough or urban district) within the s. is to obtain a scheme to regulate the reasonable use thereof.

(3) Where limitations or conditions are imposed by the Minister under this section, they shall be published

by such person and in such manner as the Minister may direct.

Adequate notice to the public will be given.

Publication of limitations or conditions imposed.

(4) Any person who, without lawful authority, draws or drives upon any land to which this section applies any carriage, cart, caravan, truck, or other vehicle, or camps or lights any fire thereon, or who fails to observe any limitation or condition imposed by the Minister under this section in respect of any such land, shall be liable on summary conviction to a fine not exceeding forty shillings for each offence.

A person may be able to justify driving upon the common, &c., as done in the exercise of commonable rights, *e.g.*, to cart turf.

Penalty for breach of conditions.

As to measure of damages in actions by commoners for damage by traction engines, see *Walker* v. *Murphy*, 1915, 1 Ch. 71.

The penalties imposed by this sub-s. afford a protection which has long been required to prevent damage by camp fires, &c.

(5) Nothing in this section shall prejudice or affect the right of any person to get and remove mines or minerals or to let down the surface of the manorial waste or common.

As to the right of the lord to get and remove minerals under a common, see *Butterknowle Colliery Co., Ltd.* v. *Bishop Auckland, &c. Socy., Ltd.*, 1906, A. C. 305; *Butterley Co., Ltd.* v. *New Hucknall Colliery Co., Ltd.*, 1910, A. C. 381; *Consett Industrial Socy.* v. *Consett Iron Co.*, 1922, 2 Ch. 135; *Welldon* v. *Butterley Co.*, 1920, 1 Ch. 130.

Right to work minerals.

(6) This section does not apply to any common or manorial waste which is for the time being held for Naval, Military or Air Force purposes and in respect of which rights of common have been extinguished or cannot be exercised.

As to the powers for acquisition of land for military purposes, see Defence As., 1842 to 1891; Military Lands As., 1892 to 1903, extended to naval purposes by Naval Works A., 1895, and to Air Force purposes by Stat. R. & O., 1918, No. 538, made under the Air Force (Constitution) A., 1917, s. 13.

See also Defence of the Realm (Acquisition of Land) As., 1916 and 1920; Military Manœuvres As., 1897 and 1911.

Commons and waste acquired for defence and training purposes, &c.

Though rights of common may be extinguished while the land is used as a camp, naval station, ordnance stores, rifle range, aerodrome, &c., it does not follow that when it has ceased to be used for such purposes the rights of common will not revive.

"Cannot be exercised."

194.—(1) The erection of any building or fence, or the construction of any other work, whereby access to land to which this section applies is prevented or

Restrictions on inclosure of commons.

impeded, shall not be lawful unless the consent of the Minister thereto is obtained, and in giving or withholding his consent the Minister shall have regard to the same considerations and shall, if necessary, hold the same inquiries as are directed by the Commons Act, 1876, to be taken into consideration and held by the Minister before forming an opinion whether an application under the Inclosure Acts, 1845 to 1882, shall be acceded to or not.

39 & 40 Vict. c. 56.

This s. is new. The marginal note is somewhat misleading; the expression "inclosure" is used in a new sense.

"Access": see s. 193, *sup.*; "land to which this s. applies": sub-s. (3), *inf.*

Information to be furnished to the Minister.

As to the information to be furnished to the Minister on an application under this s., see Commons A., 1876, s. 10 (3), (4) and (5). By necessary implication the s. gives the Minister a power to authorise the erection of a golf house, cricket pavilion, bandstand or other building to improve the amenities of the land.

Inclosure Acts.

See also Commons A., 1899, which modifies the Inclosure As.

(2) Where any building or fence is erected, or any other work constructed without such consent as is required by this section, the county court within whose jurisdiction the land is situated, shall, on an application being made by the council of any county or borough or district concerned, or by the lord of the manor or any other person interested in the common, have power to make an order for the removal of the work, and the restoration of the land to the condition in which it was before the work was erected or constructed, but any such order shall be subject to the like appeal as an order made under section thirty of the Commons Act, 1876.

Order for removal of obstructions.

An ordinary member of the public, as opposed to a person having a right of common, has no right to apply to the county court under this s. As to "court," see s. 203 (3), *inf.*

Abatement of nuisances.

As to the limits on the right of commoners, independently of this s., to abate a nuisance caused by obstructions, see *Hope* v. *Osborne*, 1913, 2 Ch. 349.

Appeal.

The appeal under this s. is to the High Court, which may reverse, modify or confirm the order, or to remit the case to the county court, with directions.

(3) This section applies to any land which at the commencement of this Act is subject to rights of common:

Provided that this section shall cease to apply—

(a) to any land over which the rights of common are extinguished under any statutory provision;

(b) to any land over which the rights of common are otherwise extinguished, if the council of the county or county borough in which the land is situated by resolution assent to its exclusion from the operation of this section and the resolution is approved by the Minister.

Cesser of application of s.

"Under any statutory provision": *e.g.*, under the Inclosure As.

"Otherwise extinguished": *e.g.*, by a release by the commoners to the lord of the manor, or by an enfranchisement by deed before 1926, where the rights of common are not re-granted, and the remaining rights are subsequently released.

(4) This section does not apply to any building or fence erected or work constructed if specially authorised by Act of Parliament, or in pursuance of an Act of Parliament or Order having the force of an Act, or if lawfully erected or constructed in connexion with the taking or working of minerals in or under any land to which the section is otherwise applicable, or to any telegraphic line as defined by the Telegraph Act, 1878, of the Postmaster-General.

Savings.

As to mineral rights, *cf.* s. 193 (5), *sup.*

"Telegraphic line" means telegraphs, posts, and any work (within the meaning of the Telegraph A., 1863), and also any cables, apparatus, pneumatic or other tube, pipe or thing whatsoever used for the purpose of transmitting telegraphic communications: Telegraph A., 1878, s. 2. A telegraphic message includes a message by telephone: *A.-G.* v. *Edison,* 1880, 6 Q. B. D. 244.

Judgments, &c. affecting Land.

Equitable charges in right of judgment debt, &c.

195.—(1) Subject as hereinafter mentioned a judgment entered up in the Supreme Court (whether before or after the commencement of this Act) against any person (in this section called a "judgment debtor") shall operate as an equitable charge upon every estate or interest (whether legal or equitable) in all land to or over which the judgment debtor at the date of entry or at any time thereafter is or becomes—

(a) beneficially entitled; or

(b) entitled to exercise a power of disposition for his own benefit without the assent of any other person;

and the judgment shall bind—

(i) the judgment debtor; and

(ii) all persons deriving title under him subsequently to the entry of the judgment; and

(iii) all persons capable of being bound by a disposition by the judgment debtor made after the entry of the judgment, including the issue of his body and all other persons, if any, whom he might, without the assent of another person, have barred from any remainder, reversion or other interest, in the land.

This sub-s. reproduces part of the Judgments A., 1838, s. 13.

Definitions. "Subject as hereinafter mentioned": sub-ss. (3), (4), *inf.*

"Judgment": sub-s. (5), *inf.*

"Land": s. 205 (1) (ix); "legal estate" and "equitable interest": *ib.* (x); also s. 1, *sup.*

Equitable charges. As to realisation of equitable charges: ss. 90-1, *sup.*

Tenant in tail; owner of base fee. "Power of disposition" includes the right of a tenant in tail in possession to dispose of his equitable interest by way of disentail, without requiring the assent of a protector; *semble*, the judgment binds the issue of a tenant in tail in remainder who creates a base fee, for he can do this without the consent of the protector: see para. (iii), provided the disentailing assurance is made after the entry of the judgment.

Prior equitable mortgagee. "Persons deriving title . . . subsequently to the entry": a prior equitable mortgagee thus retains his priority over the judgment creditor, though the latter may have acquired possession of the land under an elegit, without notice of the mortgage: *Whitworth* v. *Gaugain*, 1846, 1 Phil. 728.

Judgments, legal and equitable execution. As to judgments, legal and equitable execution, see 1 Prid., 22nd ed., ch. vi., s. (3).

For a judgment to operate as a charge, it is no longer necessary that the land should be actually delivered in execution.

Registration takes the place of delivery in execution. The registration of any writ or order "affecting land" for the purpose of enforcing the judgment brings into operation the charge created by this sub-s., a charge which affects every interest in the land of the debtor, whether legal or equitable, and whether present or future. It is not essential that the writ or order should be capable, in its nature, of affecting the particular interest in land which the debtor has: *Lord Ashburton* v. *Nocton*, 1915, 1 Ch. 274, where the writ registered was a writ of elegit, and the interest in the land was an equity of redemption. Thus, a judgment creditor, on registering a writ of elegit, or an order appointing a receiver, obtains a charge on an interest in remainder, which is incapable of being taken in execution: *Lord Ashburton* v. *Nocton*, *sup.*, at pp. 281, 282. After 1925 a mortgagor of a legal estate in land will always have a legal estate, while the interest of every remainderman will only be an equitable interest. See also *Re Harrison & Bottomley*, 1899, 1 Ch. 465. The effect of the repeal of the Judg. A., 1864, s. 1, in 1900, was to assimilate so far as possible the rights of creditors under legal and equitable execution.

Nature of order.

Interests in remainder.

Infant's interest in remainder. This sub-s. does not give the court jurisdiction to make an order charging an infant's interest in remainder with the repayment of money advanced for his maintenance: *Re Badger*, 1913, 1 Ch. 385.

Infant's beneficial interests. But under T. A., 1925, s. 53, the court now has power, with a view to the benefit of the infant, to appoint a person to convey.

(2) Every judgment creditor shall have the same remedies against the estate or interest in the land so

charged or any part thereof as he would have been entitled to if the judgment debtor had power to charge the same, and had by writing, under his hand, agreed to charge the same, with the amount of the judgment debt and interest thereon.

Remedies of judgment creditor.

As to realisation of such a charge by the court: ss. 90, 91, *sup.* *Semble*, in view of these powers, resort will be had to this s. in preference to proceedings by elegit, where those proceedings are available.

Interest.

The judgment debt carries interest at 4 per cent. per annum, and the judgment takes effect from the date of entry: R. S. C., Ord. 41, r. 3. This applies notwithstanding that the original contract provides that the debt is to bear interest at a higher rate: *Re European Central Ry. Co.*, 1876, 4 Ch. D. 33; *Ex p. Fewings*, 1883, 25 Ch. D. 338.

Rights to higher rate under the security.

This, however, does not affect the other rights of the judgment creditor under the terms of any security held by him: *Economic Life Assurance Society* v. *Usborne*, 1902, A. C. 147, where the previous cases are explained.

(3) Provided that—

(i) A judgment, whether obtained (on behalf of the Crown or otherwise) before or after the commencement of this Act, shall not operate as a charge on any interest in land or on the unpaid purchase money for any land unless or until a writ or order, for the purpose of enforcing it, is registered in the register of writs and orders at the Land Registry;

(ii) No judgment creditor shall be entitled to take proceedings to obtain the benefit of his charge until after the expiration of one year from the time of entering up the judgment;

(iii) No such charge shall operate to give the judgment creditor any preference, in case of the bankruptcy of the judgment debtor, unless the judgment has been entered up one year at least before the bankruptcy;

(iv) A judgment against a mortgagee, who is paid off before or at the time of a conveyance of an estate or interest in land to a purchaser, shall not create a charge upon the estate or interest in the land vested in the purchaser by such conveyance.

This sub-s. reproduces the remainder of s. 13 of the Judg. A., 1838, the L. C. A., 1900, s. 2 (1), and, as respects para. (iv), the Judg. A., 1855, s. 11.

The provisions as to purchase for value without notice are omitted, because registration amounts to actual notice: s. 198, *inf.*

Registration of writs and orders.

As to registration of writs and orders, see L. C. A., 1925, s. 6. Para. (i) applies, even though the writ or order so registered would not affect the interest in land which the debtor has: see note to sub-s. (1), *sup.*

Judgment creditor's position during first year.

Para. (ii) prevents proceedings to obtain the benefit of the charge, until after the expiration of one year from entry, *e.g.*, proceedings for the appointment of a receiver: *Smith* v. *Hurst*, 1845, 1 Coll. 705; 1852, 10 Hare, 30; *Mackinnon* v. *Stewart*, 1850, 1 Sim. N. S. 76, 91. It does not, however, prevent the court from interfering at his instance to prevent the charge from being defeated, *e.g.*, by waste on the part of the debtor.

Waste.

Charge on income.

If the interest charged is an interest in income only, it appears that the judgment creditor may within the year obtain an order impounding the income: *Yescombe* v. *Landor*, 1859, 28 Beav. 80, following *Watts* v. *Jefferyes*, 1851, 3 Mac. & G. 372 (a decision on the Judg. A., 1838, s. 14).

The judgment creditor is, during the year, a proper party to foreclosure or redemption proceedings at the instance of other persons interested: *Harrison* v. *Pennell*, 1858, 4 Jur. N. S. 682.

Bankruptcy.

As to further restrictions in bankruptcy, see Bkcy. A., 1914, s. 40; *Re Perrin*, 1842, 2 Dr. & War. 147.

Judgment against mortgagee who is paid off.

Para. (iv) reproduces the Judg. A., 1855, s. 11 (part); relying on this para., searches for writs or orders are not made against mortgagees.

(4) A recognisance, on behalf of the Crown or otherwise, whether entered into before or after the commencement of this Act, and an inquisition finding a debt due to the Crown, and any obligation or specialty made to or in favour of the Crown, whatever may have been its date, shall not operate as a charge on any interest in land, or on the unpaid purchase money for any land, unless or until a writ or order, for the purpose of enforcing it, is registered in the register of writs and orders at the Land Registry.

Recognisances and Crown debts.

This sub-s. reproduces the L. C. A., 1900, s. 2 (1) and (2), except as respects judgments, which are already covered by sub-s. (3), para. (i), *sup.*

As to registration of recognisances, &c., see L. C. A., 1925, s. 6.

As to Crown debts: 1 Prid., 22nd ed., ch. vi., s. (3).

(5) In this section "judgment" includes any decree, order, or rule having the effect of a judgment.

Judgment defined.

This definition is taken from L. C., &c. A., 1888, s. 3, but the exception of bankruptcy orders in that s. is omitted, for receiving orders made after 1925 may be registered under L. C. A., 1925, s. 6 (1).

Notices.

Regulations respecting notices.

196.—(1) Any notice required or authorised to be served or given by this Act shall be in writing.

Notices to be in writing.

This s. replaces C. A., 1881, s. 67, with an amendment, applying the s. to notices given under any instrument relating to property: sub-s. (5).

It applies to notices under L. P. A., 1922, s. 132: see *ib.*, sub-s. (4).

"Writing": Interp. A., 1889, s. 20.

(2) Any notice required or authorised by this Act to be served on a lessee or mortgagor shall be sufficient,

although only addressed to the lessee or mortgagor by that designation, without his name, or generally to the persons interested, without any name, and notwithstanding that any person to be affected by the notice is absent, under disability, unborn, or unascertained.

"Lessee," "mortgagor": s. 205 (1) (xvi), (xxiii).

"Persons interested": *Cronin* v. *Rogers*, 1884, Cab. & El. 348 (notice addressed to original lessee "and all others whom it may concern," and left on property, is sufficient notice to assignee); *Gentle* v. *Faulkner*, 1900, 2 Q. B. 267, 276 (notice to equitable assignee of tenant by name was insufficient notice to tenant).

Notice to lessee or mortgagor by designation without name.

(3) Any notice required or authorised by this Act to be served shall be sufficiently served if it is left at the last-known place of abode or business in the United Kingdom of the lessee, lessor, mortgagee, mortgagor, or other person to be served, or, in case of a notice required or authorised to be served on a lessee or mortgagor, is affixed or left for him on the land or any house or building comprised in the lease or mortgage, or, in case of a mining lease, is left for the lessee at the office or counting-house of the mine.

"United Kingdom," "lessor," "mortgagee": s. 205 (1) (xvi), (xxiii), (xxx).

"Left on the land": *e.g.*, where tenants are in occupation: *Cronin* v. *Rogers*, *sup.*

Notice left at abode or office, or affixed on land.

(4) Any notice required or authorised by this Act to be served shall also be sufficiently served, if it is sent by post in a registered letter addressed to the lessee, lessor, mortgagee, mortgagor, or other person to be served, by name, at the aforesaid place of abode or business, office, or counting-house, and if that letter is not returned through the post-office undelivered; and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered.

This sub-s. is only applicable where the addressee is addressed "by name." Delivery under some special arrangement, though a permanent one, with the post-office authorities is not a delivery "in the ordinary course," so as to postpone the statutory date of service: *Kemp* v. *Wanklyn*, 1894, 1 Q. B. 583. Where there is no delivery "in the ordinary course," service by registered letter is not good: *Lewis* v. *Evans*, 1874, L. R. 10 C. P. 297.

Notice by registered post.

"Ordinary course."

(5) The provisions of this section shall extend to notices required to be served by any instrument affecting property executed or coming into operation after the

commencement of this Act unless a contrary intention appears.

Service of notices affecting property.

This sub-s. is new, and enables a provision relating to notices to be omitted from documents, *e.g.*, debenture trust deeds, or leases.

(6) This section does not apply to notices served in proceedings in the court.

Service in proceedings.

As to service of notices, &c., in proceedings in court, see s. 203; R. S. C., O. 67.

Notice of memorials registered in Middlesex and Yorkshire.

197.—(1) The registration in a local deeds registry of a memorial of any instrument transferring or creating a legal estate or charge by way of legal mortgage, shall be deemed to constitute actual notice of the transfer or creation of the legal estate or charge by way of legal mortgage, to all persons and for all purposes whatsoever, as from the date of registration or other prescribed date, and so long as the registration continues in force.

Memorials of documents affecting legal estates.

This s. is new. It relates only to "memorials" of instruments registered in a local deeds registry pursuant to s. 11, *sup.*, as opposed to the registration of land charges in Yorkshire under L. C. A., 1925, s. 10 (6), as to which see next s.

"Instrument": s. 205 (1) (viii); "legal estate": *ib.* (x) and s. 1, *sup.*

"Prescribed date": it may be found expedient to prescribe that the registration shall take effect the day after the application is made, in order that complete searches or official certificates of search may be made or given up to date.

Over-reaching provisions.

For overreaching purposes, where the interest is merely shifted to the proceeds, the question of notice or no notice may be wholly immaterial: *cf.* s. 2 (1) and (2), *sup.*, which, however, only relate to the shifting of equitable interests; on the other hand, under s. 28 (1), *sup.*, and S. L. A., 1925, s. 72, legal estates may be shifted.

Restrictions on effect of notice.

As to restrictions on the effect of notice: s. 199, *inf.*; see also as to tacking and further advances, s. 94, *sup.*

"Puisne mortgages."

If the land affected is in Middlesex or Yorkshire, a "puisne mortgage" (L. C. A., 1925, s. 10, Class C. (i)) will be registered by way of memorial; in other cases it will be registered as a land charge. The priority of "puisne mortgages" not in Middlesex or Yorkshire depends on the date of registration of a land charge: s. 97, *sup.* See also 1st Sch., Pt. VII., para. 6; Pt. VIII., para. 5. If the land affected is exclusively within Middlesex or a Yorkshire riding, the priority of the mortgage is left to depend on the provisions of the Middlesex and Yorkshire Registration of Deeds As.

As to the effect of these Acts: 1 Prid., 22nd ed., ch. vi., s. (2).

Notice as respects legal estates.

Though, with the exception of the special provisions relating to further advances and "puisne mortgages," notice as respects legal estates is immaterial in regard to priorities, it may be material when the proceeds of sale (*e.g.*, on a sale by a mortgagee) fall to be distributed.

(2) The registration of a memorial of an instrument not required to be registered does not operate

to give notice of such instrument or of the contents thereof.

Instruments not required to be registered.

Registration in a local deeds registry is not necessary, unless the instrument operates to transfer or create a legal estate, or to create a legal charge thereon: s. 11, *sup.*

Thus, registration by "memorial" of an equitable interest is ineffectual; it must be registered, whether in Yorkshire or in London, as a land charge if required to be registered at all.

(3) This section operates without prejudice to the provisions of this Act respecting the making of further advances by a mortgagee, and only applies to land within the jurisdiction of the registry.

Further advances.

As to priority in respect of further advances, see s. 94, *sup.*

Registration under the Land Charges Act, 1925, to be notice.

198.—(1) The registration of any instrument or matter under the provisions of the Land Charges Act, 1925, or any enactment which it replaces, in any register kept at the land registry or elsewhere, shall be deemed to constitute actual notice of such instrument or matter, and of the fact of such registration, to all persons and for all purposes connected with the land affected, as from the date of registration or other prescribed date and so long as the registration continues in force.

This s. is new. As to a purchaser's rights when the search discloses a claim: s. 43, *sup.*

"Enactment which it replaces": see L. C. As., 1888 and 1900.

"Or other prescribed date": see note to last s., and to L. C. A., 1925, s. 24.

Registration of land charges, &c., to be notice.

Registration under the L. C. As. (see s. 205 (3), *inf.*) includes registration in a Yorkshire deeds registry, which under L. C. A., 1925, s. 10 (6), is to have effect as registration under that Act; it also includes registration in the joint stock companies register: *ib.*, s. 10 (5).

"Puisne mortgages."

As to "puisne mortgages," see note to last s.; these create legal estates, but, with a few exceptions, registration under the L. C. A., 1925, is confined to equitable interests; hence, date of notice is material. See also s. 137, *sup.*

As to matters not within L. C. A., 1925, see s. 2 (5), *sup.*

(2) This section operates without prejudice to the provisions of this Act respecting the making of further advances by a mortgagee, and applies only to instruments and matters required or authorised to be registered under the Land Charges Act, 1925.

Extent of s.

"Further advances": see s. 94, *sup.*

"Required" or "authorised" to be registered.

"Authorised" to be registered: *e.g.*, a puisne mortgage made before 1926 may be registered as a land charge before any transfer is made: L. C. A., 1925, s. 10 (7); but it is not by that Act "required" to be registered unless it comes within Class C. (i), for ss. 13 and 14 impose no penalty unless it comes within that definition.

The only penalty imposed for non-registration of a "puisne" mortgage made before 1926 and not transferred after 1925, is that it cannot rank as a legal mortgage: 1st Sch., Pt. VII., para. 6; Pt. VIII., para. 5, *inf.*

Restrictions on constructive notice.

199.—(1) A purchaser shall not be prejudicially affected by notice of—

(i) any instrument or matter capable of registration under the provisions of the Land Charges Act, 1925, or any enactment which it replaces, which is void or not enforceable as against him under that Act or enactment, by reason of the non-registration thereof;

(ii) any other instrument or matter or any fact or thing unless—

(a) it is within his own knowledge, or would have come to his knowledge if such inquiries and inspections had been made as ought reasonably to have been made by him; or

(b) in the same transaction with respect to which a question of notice to the purchaser arises, it has come to the knowledge of his counsel, as such, or of his solicitor or other agent, as such, or would have come to the knowledge of his solicitor or other agent, as such, if such inquiries and inspections had been made as ought reasonably to have been made by the solicitor or other agent.

This sub-s. reproduces C. A., 1882, s. 3, with amendments; para. (i) is new. It shows, for instance, that notice of an equitable interest under the next s. is not sufficient without registration.

"Notice": s. 205 (1) (xvii); "instrument": *ib.* (viii); "enactment which it replaces": see L. C. As., 1888 and 1900; "void . . . by reason of the non-registration thereof": L. C. A., 1925, ss. 3, 5, 7, 9, 13, 14.

Avoidance by reason of non-registration.

That Act avoids a non-registered disposition only for the benefit of a subsequent "purchaser" as therein defined; the definition in s. 205 (1) (xxi) does not apply to para. (i), *sup.* On the other hand, that definition applies to para. (ii).

As to para. (ii).

As to para. (ii), see per Cozens-Hardy, J., in *Hunt* v. *Luck*, 1902, 1 Ch. 428, 430; and see *Molyneux* v. *Hawtrey*, 1903, 2 K. B. 487, 495, 497. But para. (ii) (a) does not alter the earlier law: *Bailey* v. *Barnes*, 1894, 1 Ch. 25, 35; *Berwick* v. *Price*, 1905, 1 Ch. 632, 639-40.

Reasonable inquiries.

"If such inquiries, &c.": *Bailey* v. *Barnes, sup.; Taylor* v. *London & County Bank*, 1901, 2 Ch. 231; *Re Alms Corn Charity, ib.* 750; *Hunt* v. *Luck, sup.; Holloway Brothers, Ltd.* v. *Hill*, 1902, 2 Ch. 612, 620; *Rowell* v. *Satchell*, 1903, 2 Ch. 212, 221; *Molyneux* v. *Hawtrey, sup.; Bateman* v. *Hunt*, 1904, 2 K. B. 530, 540; *Powell* v. *Browne*, 1907, 97 L. T. 854; *Perham* v. *Kempster*, 1907, 1 Ch. 479; *Matthews* v. *Smallwood*, 1910, 1 Ch. 777.

Subject to s. 44 (5) and (8), *sup.*, which reverses *Patman* v. *Harland*, 1881, 17 Ch. D. 353, and to s. 10, *sup.*, as respects legal estates, a purchaser cannot avoid constructive notice by omitting to investigate the title: *Dunning* v. *E. of Gainsborough*, 1885, 54 L. J. Ch. 991; *Re Cox & Neve*, 1891, 2 Ch. 109; *Bailey* v. *Barnes*, *sup.*; *Imray* v. *Oakshette*, 1897, 2 Q. B. 218; *Abbey* v. *Gutteres*, 1911, 55 Sol. J. 364; nor by omitting to require production of the deeds: s. 13, *sup.*; *Spencer* v. *Clarke*, 1878, 9 Ch. D. 137; *Oliver* v. *Hinton*, 1899, 2 Ch. 264; *Berwick* v. *Price*, *sup.*; *Re Weniger's Policy*, 1910, 2 Ch. 291; if gross negligence in not doing so is established: *Hudston* v. *Viney*, 1921, 1 Ch. 98; but where due enquiry is made and a reasonable excuse given for non-production, he may avoid constructive notice: *Hewitt* v. *Loosemore*, 1851, 9 Hare, 449. Where a purchaser enters into a contract without calling for a deed therein referred to, and such deed discloses that the property has been conveyed subject to an earlier deed, which earlier deed discloses the existence of a legal easement, then the purchaser cannot set up the easement as a defect in title: *Re Childe & Hodgson*, 1906, 54 W. R. 234; but where a vendor stated that the property was subject to the same conditions as adjoining property, the purchaser was not fixed with constructive notice of restrictive covenants: *Hone* v. *Gakstatter*, 1909, 53 Sol. J. 286. Restrictive covenants made after 1925 must be protected by a land charge; notice is no longer material.

Omission to make inquiries as to title.

Production of deeds.

Restrictive covenants.

Special provision also is made as respects notice where further advances are made by s. 94, *sup.*

Under the old law, notice of the existence of debentures is not necessarily constructive notice of their terms: *English, &c. Co.* v. *Brunton*, 1892, 2 Q. B. 1; *ib.* 700; *Re Valletort, &c. Co.*, 1903, 2 Ch. 654; *Re Standard Rotary Machine Co.*, 1906, 95 L. T. 829; *Wilson* v. *Kelland*, 1910, 2 Ch. 306.

Debentures.

Registration under the Coys. A., 1908, s. 93, of debentures creating an equitable charge operates as registration of a land charge: L. C. A., 1925, s. 10 (5); and also gives notice of the instrument: s. 198, *sup.*

As to constructive notice to tenants of a ground floor of the rights of tenants of upper floors, see *Phipos* v. *Callegari*, 1910, 54 Sol. J. 635.

Tenant of part of house.

Semble, the inspections referred to in paras. (a) and (b) of this sub-s. do not extend to a physical examination of the property being dealt with: *Slack* v. *Hancock*, 1912, 107 L. T. 14.

Physical examination of property.

The occupation of land by a tenant does not affect a purchaser with constructive notice of the lessor's title or rights: *Hunt* v. *Luck*, *sup.*; the rights of the occupier are not affected by this Act: s. 14, *sup.* Hence, inquiry should always be made of the person in actual occupation as to his rights.

Occupation by tenant.

"In the same transaction": sub-s. (1) (ii) (b) alters the earlier law and prevents constructive notice under such circumstances as those in *Hargreaves* v. *Rothwell*, 1836, 1 Keen, 154; see *Re Cousins*, 1886, 31 Ch. D. 671; *Taylor* v. *London & County Bank*, *sup.*; *Bateman* v. *Hunt*, *sup.*; *Slack* v. *Hancock*, *sup.*

Notice to solicitor.

A trustee is not affected by notice obtained by reason of acting in another trust: T. A., 1925, s. 28.

Notice to trustee.

(2) Paragraph (ii) of the last subsection shall not exempt a purchaser from any liability under, or any obligation to perform or observe, any covenant, condition, provision, or restriction contained in any instrument under which his title is derived, mediately or immediately; and such liability or obligation may be enforced

in the same manner and to the same extent as if that paragraph had not been enacted.

Saving of liabilities.

This sub-s. replaces C. A., 1882, s. 3 (2).

Whether purchaser must inquire?

The general effect of this sub-s. is that a purchaser of the fee simple will be bound by provisions in any deed forming part of the title unless either he escapes as a purchaser without notice: see s. 2 (5), *sup.*; or the equitable interest is over-reached under the statutory provisions, or is defeated by reason of non-registration or otherwise. The cases in the last note show that he will not so escape if he knows, or ought to know, of the deed, though he may not know its contents; but see *English, &c. Co.* v. *Brunton,* 1892, 2 Q. B. 700, which suggests (pp. 708, 713-14) a distinction between the purchase of land and that of personal property, and also takes a distinction between documents which must, and those which may or may not, relate to the subject-matter, and decides that mere knowledge of the existence of the latter does not necessarily amount to constructive notice of their contents: see also other cases cited in note to sub-s. (1), "Debentures," *sup.* After 1925 notice as respects legal estates is still further restricted by s. 10, *sup.* Again, many assumptions are authorised by S. L. A., 1925, s. 110.

Open contract.

If the title is furnished on an open contract, and commences with a deed of the proper kind thirty years old, having no recitals, he is bound, under s. 44 (1), *sup.*, to accept this, and takes without notice of anything contained in any prior deed. If that deed recites prior deeds, and the recitals throw any suspicion on the title, in some cases the commencement of the title may not be carried back to "the time prescribed by law for commencement of title": see s. 45 (1) and note thereon, *sup.* The purchaser is not prevented by either of the last-mentioned ss. from requiring the earlier title, and may be fixed with notice of it if he does not inquire, or, on inquiry, does not get a satisfactory explanation.

Stipulated commencement.

Where, by contract, the time for commencement of title is "stipulated" (see s. 45 (1), *sup.*), but if left as "prescribed by law," would have extended over a stage in the title disclosing some defect, there the purchaser must take the consequences of contracting himself out of the right to travel through that stage: *Re Cox & Neve,* 1891, 2 Ch. 109; *Re Nisbet & Potts,* 1905, 1 Ch. 391; 1906, 1 Ch. 386; but is not affected with notice of matters before the statutory commencement of title: s. 45 (8), *sup.*

When inquiries unnecessary.

It is no longer necessary for a purchaser to make inquiries where the matter comes within ss. 2, 10, 17, 27, 28, 44 (5) (7) (8), 88—91, 104, 111—113, 126—8, *sup.*; or ss. 203—4; 1st Sch., Pt. III., paras. 3 (iv), 4; Pt. IV., para. 1 (9); Pt. VII., para. 6; Pt. VIII., para. 5, *inf.*; or S. L. A., 1925, s. 110; or Ad. of E. A., 1925, ss. 36, 41; or in any other case where, by statute, a purchaser is entitled to make an assumption or it is stated that he is not to be concerned with any specific matter.

Lessor and lessee.

As to liabilities between lessor and lessee: s. 6, *sup.*

(3) A purchaser shall not by reason of anything in this section be affected by notice in any case where he would not have been so affected if this section had not been enacted.

Saving.

This sub-s. replaces C. A., 1882, s. 3 (3): see *Hunt* v. *Luck,* 1902, 2 Ch. 428, at p. 435.

(4) This section applies to purchases made either before or after the commencement of this Act.

Retrospective.

This sub-s. replaces C. A., 1882, s. 3 (4).

200.—(1) Where land having a common title with other land is disposed of to a purchaser (other than a lessee or a mortgagee) who does not hold or obtain possession of the documents forming the common title, such purchaser, notwithstanding any stipulation to the contrary, may require that a memorandum giving notice of any provision contained in the disposition to him restrictive of user of, or giving rights over, any other land comprised in the common title, shall, where practicable, be written or indorsed on, or, where impracticable, be permanently annexed to some one document selected by the purchaser but retained in the possession or power of the person who makes the disposition, and being or forming part of the common title.

Notice of restrictive covenants and easements.

This sub-s. replaces C. A., 1911, s. 11 (1). "Purchaser": s. 205 (1) (xxi).

"Or where impracticable be permanently annexed, &c.": for instance, the deed might be so covered with indorsements that there would be no room for more.

"Or where impracticable, &c."

The s. applies to the grant of an easement or privilege as well as the imposition of a restrictive covenant, but the indorsement is not sufficient; registration of a land charge is required: sub-s. (4), *inf.*

Easements and restrictive covenants.

It is expedient that notice of legal estates should be indorsed, not to protect them, but to prevent their being overlooked when an abstract is prepared.

(2) The title of any person omitting to require an indorsement to be made or a memorandum to be annexed shall not, by reason only of this enactment, be prejudiced or affected by the omission.

This sub-s. replaces C. A., 1911, s. 11 (2).

This sub-s. is necessary, otherwise the mere omission to require an indorsement might be construed as negligence.

Negligence.

(3) This section does not apply to dispositions of registered land.

As to registered land, see L. R. A., 1925, ss. 48 (notice of lease), 49 (notice of grant or reservation of annuity, &c.), 50 (notice of restrictive covenants).

Registered land.

(4) Nothing in this section affects the obligation to register a land charge in respect of—

(a) any restrictive covenant or agreement affecting freehold land; or

(b) any estate contract; or

(c) any equitable easement, liberty or privilege.

This sub-s. is new.

See L. C. A., 1925, s. 10 (1), Class C. (iv) (estate contract), and Class C. (ii) and (iii) (restrictive covenant or agreement, and equitable easement).

Obligation to register land charges.

Part XII.

Construction, Jurisdiction, and General Provisions.

Provisions of Act to apply to incorporeal hereditaments.

201.—(1) The provisions of this Act relating to freehold land apply to manors, reputed manors, lordships, advowsons, tithe and perpetual rentcharges, and other incorporeal hereditaments, subject only to the qualifications necessarily arising by reason of the inherent nature of the hereditament affected.

Assimilation.

This s. is new: the object is to assimilate the law affecting corporeal and incorporeal property as far as possible. There will, with insignificant exceptions, be no "hereditaments" after 1925, hence for the purposes of this Act that expression is defined: s. 205 (1) (ix); a personal annuity granted before 1925 so as to descend to heirs is not "real property," and is excluded; but the devolution of a "personal inheritance" to the heir is abolished: Ad. of E. A., 1925, s. 45.

Manors.

Manors (s. 205 (1) (ix)) are not abolished by L. P. A., 1922, or this Act; but the jurisdiction of the court leet, customary or other court in respect of works for the benefit of land within the manor is transferred to the High Court or Palatine Court having jurisdiction: L. P. A., 1922, 12th Sch., para. 6.

As to the extinguishment of manorial incidents: *ib.*, Pt. VI. and 13th Sch.

As to the rights passing on conveyance of a manor, see s. 62 (3), *sup.*

"Reputed manors": see note to s. 205 (1) (ix), *inf.*

"Lordship": Sweet, L. Dict. 500.

Advowsons.

As to advowsons, see sub-s. (2), *inf.*

Rentcharges.

For special provisions as to rentcharges, see ss. 76, 77 (implied covenants), 121 (remedies for recovery), 122 (creation out of another rentcharge), 162 (perpetuity rule), 189 (indemnities), 190 (equitable apportionment), 191 (redemption and legal apportionment).

Titles of honour.

"Subject . . . to the qualifications," &c., *e.g.*, in case of a title of honour or dignity, which is inalienable: sub-s. (2), *inf.*; *Re Rivett-Carnac*, 1885, 30 Ch. D. 136; and a disturbance of which is not cognisable by the court: *Earl Cowley* v. *Countess C.*, 1901, A. C. 450, 456.

61 & 62 Vict. c. 48.

(2) This Act does not affect the special restrictions imposed on dealings with advowsons by the Benefices Act, 1898, or any other statute or measure, nor affect the limitation of, or authorise any disposition to be made of, a title or dignity of honour which in its nature is inalienable.

"Any other . . . measure": Benefices Act, 1898 (Amendment) Measure, 1923. A mortgage cannot now be made of a right of patronage: *ib.*, s. 4.

Advowsons, titles of honour.

"Title or dignity of honour": see sub-s. (1), *sup.*, and note thereto.

(3) This section takes effect subject to the express provisions of this Act relating to undivided shares.

Undivided shares in incorporeal hereditaments.

As to undivided shares, see s. 34, *sup.*, and 1st Sch., Pt. IV.; see also S. L. A., 1925, s. 36.

As to easements exercised in common: s. 187, *sup.*

202. For giving effect to this Act, the enfranchisement of copyhold land, and the conversion into long terms of perpetually renewable leaseholds and of leases for lives and of leases for years terminable with life or lives or on marriage, effected by the Law of Property Act, 1922, as amended by any subsequent enactment, shall be deemed to have been effected immediately before the commencement of this Act.

Provisions as to enfranchisement of copyholds, &c.

As to the enfranchisement of copyhold land: L. P. A., 1922, Pt. V.

Enfranchisement of copyhold land.

As to the conversion of perpetually renewable copyhold land into freehold: *ib.*, s. 135.

Perpetually renewable copyholds.

As to the conversion into leaseholds of copyholds for life or years without a perpetual right of renewal: *ib.*, s. 133.

Copyholds for lives or years.

As to the conversion of perpetually renewable leases and underleases into long terms: *ib.*, 15th Sch., as amended by the L. P. (Amend.) A., 1924, 2nd Sch., para. 5.

Perpetually renewable leaseholds.

As to the conversion of leases for lives into terms of ninety years: s. 149 (6), *sup.*

Leases for lives.

The object of this s. is to enable this Act to be framed as if the only tenures left were freehold and leaseholds for years.

Object of s.

203.—(1) Payment of money into court effectually exonerates therefrom the person making the payment.

Payment into court, jurisdiction and procedure.

This sub-s. replaces C. A., 1881, s. 69 (2). "Court": see sub-s. (3), *inf.*

This sub-s. does not invite a person, who can obtain a valid receipt from his creditor, to pay money into court instead of paying the creditor: *cf. Re Giles,* 1886, 34 W. R. 712; T. A., 1925, s. 63, and note thereto.

Money must not be paid into court without sufficient reason.

If the debtor is in doubt as to the person to whom he should make the payment, the proper course is to take proceedings by summons under R. S. C., Ord. 54, r. 1; or in case of administrations and trusts, under R. S. C., Ord. 55, rr. 3, 4. Where this procedure is available and he pays the money into court, he may have to pay the costs: *Re Giles, sup.*

A married infant can give a receipt for income: s. 21, *sup.* Trustees can be appointed to act for an infant and give a discharge for the property: Ad. of E. A., 1925, s. 42.

Receipts by infants and appointment of trustees for infants.

As to compulsory sales: s. 42 (7), *sup.*

Compulsory sales.

(2) Subject to any rules of court to the contrary—

(a) Every application to the court under this Act shall, save as otherwise expressly provided, be by summons at chambers;

This para. replaces C. A., 1881, s. 69 (3).

Applications to court to be by summons.

It has been held that this para. is obligatory: *Re Lillwall's Trusts,* 1882, 30 W. R. 243; *Latham* v. *L.,* 1889, W. N. 171; but see *Re Blundell,* 1901, 2 Ch. 223, n.

"Save as otherwise expressly provided": this s. did not extend to the case of the action which, under s. 146 (2), a lessee might bring for relief against forfeiture; this had to be instituted by writ, not by originating summons: see

Relief against forfeiture.

Lock v. *Pearce*, 1893, 2 Ch. 271. And as to the lessee's mode of proceeding, under s. 146 (2), in the lessor's action, see *Cholmeley's School* v. *Sewell*, 1893, 2 Q. B. 254; and see R. S. C., Ord. 70, r. 1, and *Re Martin & Varlow*, 1894, W. N. 223; Annual Practice for 1925, p. 1403.

Rules of court.

See now the new rules, Appendix No. XI., Vol. II., under which the proceedings may be commenced by summons; but pleadings may be required by the judge.

(b) On an application by a purchaser notice shall be served in the first instance on the vendor;

(c) On an application by a vendor notice shall be served in the first instance on the purchaser;

(d) On any application notice shall be served on such persons, if any, as the court thinks fit.

Service of notices in proceedings.

These paras. replace C. A., 1881, s. 69 (4)—(6).

"Purchaser" in paras. (b) and (c) means a purchaser on a sale, and does not have the extended meaning of lessee or mortgagee, for "vendor" has no correspondingly extended meaning, though both expressions may include persons who have agreed to effect an exchange.

(3) In this Act, unless the contrary intention appears, "the court" means the High Court, and also the Court of Chancery of the County Palatine of Lancaster or the Court of Chancery of the County Palatine of Durham, or the county court, where those courts respectively have jurisdiction.

This sub-s. reproduces C. A., 1881, ss. 2 (xviii) and 69 (9) (part), with extensions to the Palatine Courts and county courts.

Durham Palatine Court and Lancaster Court Rules.

As to exercise of the powers of the court, in respect of land in Durham, by the Palatine Court there, see Palatine Court of Durham A., 1889, s. 10.

As to power to make rules for the Court of Chancery of Lancaster, see Chancery of Lancaster A., 1890, s. 6.

And as to rules for inferior courts generally, see Jud. A., 1925, s. 206.

(4) All matters within the jurisdiction of the High Court under this Act shall, save as otherwise expressly provided, and subject to the enactments for the time being in force with respect to the Supreme Court of Judicature, be assigned to the Chancery Division of the court.

Assignment to Chancery Division.

This sub-s. reproduces C. A., 1881, s. 69 (1).

The words "save as otherwise expressly provided" are new; for instance, applications to settle the lunatic's property will generally be made in Lunacy: s. 171 (8); those to discharge or modify restrictive covenants will generally be made to the arbitrator: s. 84 (10).

"Enactments for the time being in force," &c.: Jud. A., 1925.

(5) The court shall have full power and discretion to make such order as it thinks fit respecting the costs,

charges and expenses of all or any of the parties to any application.

This sub-s. replaces C. A., 1881, s. 69 (7).

"Costs, charges, and expenses."

Compare S. L. A., 1925, s. 113 (8), and *Re Smith's S. E.*, 1891, 3 Ch. 65, pp. 72—76.

204.—(1) An order of the court under any statutory or other jurisdiction shall not, as against a purchaser, be invalidated on the ground of want of jurisdiction, or of want of any concurrence, consent, notice, or service, whether the purchaser has notice of any such want or not.

Orders of court conclusive.

This sub-s. replaces C. A., 1881, s. 70 (1).

Applies to orders of the old courts.

"Court," as defined, s. 203 (3), *sup.*, includes the High Court, which is a division of the Supreme Court, which includes the old courts of Chancery and Common Law (Jud. A., 1925, ss. 1 and 18) all united into one court, so that this s. applies to all orders of the old courts: sub-s. (3), *inf.* It applies to orders made in Chancery as well as in Lunacy, but not to orders made in Lunacy only: Jud. A., 1925, s. 19 (3).

Grant of administration.

The grant of letters of administration by the Probate Division is an order of the court within this s.: *Hewson* v. *Shelley*, 1914, 2 Ch. 13.

The definition (s. 203 (3), *sup.*) also makes it clear that an order of a county court or a Palatine Court under such enactments as s. 194 (2), *sup.*, the County Courts A., 1888, s. 67, or the S. L. A., 1925, s. 113 (2) and (3), by which powers *of the court* are made exercisable by the inferior court, is an order *of the court* within this s.

"Purchaser": s. 205 (1) (xxi).

What matters covered by this s.

It is assumed that the court has made an order under its jurisdiction, and the words "shall not be invalidated on the ground of want of jurisdiction" are introduced to cover any irregularity of procedure which might possibly affect the jurisdiction and invalidate the order: per Lindley, M.R., in *Jones* v. *Barnett*, 1900, 1 Ch. 370, at p. 374. The court will not exercise its jurisdiction with less care than before: *Re Montagu*, 1897, 2 Ch. 8, 11.

Sales, &c. by the court.

This s. has an important effect in making valid titles under sales by the court: see ss. 2 (1) (iv), 9, 90, 91; S. L. A., 1925, ss. 64, 67; T. A., 1925, ss. 53, 57. The order for sale is made conclusive in favour of a purchaser as to jurisdiction and as to consent, notice or service (as where a party to an action or a person served with notice of judgment in an action does not appear) It is also conclusive in favour of a purchaser as to dispensing with the concurrence or consent of persons entitled, whether the objection to the order appears on the face of it or not: *Re Hall Dare*, 1882, 21 Ch. D. 41; see also *Mostyn* v. *M.*, 1893, 3 Ch. 376; *Re Whitham*, 1901, 84 L. T. 585; *Re Harrowby & Paine*, 1902, W. N. 137; *Woods* v. *Brown*, 1915, 1 Ir. R. 29. But the s. does not operate to give a good title to a purchaser at a sale under an order of the court, where the court supposed it was dealing with an interest belonging to one person, which in fact belonged to another person, not a party to or bound by the proceedings: *Jones* v. *Barnett*, *sup.* And *cf. Re Hambrough*, 1909, 2 Ch. 627.

Jurisdiction.

In view of the wide powers conferred by S. L. A., 1925, s. 64, and T. A., 1925, s. 57, a question as to jurisdiction can seldom arise as to orders made after 1925 in regard to settled land or a trust.

As to proceedings between vendor and purchaser: s. 49, *sup.*, and notes thereto.

(2) This section has effect with respect to any lease, sale, or other act under the authority of the court, and purporting to be in pursuance of any statutory power notwithstanding any exception in such statute.

(3) This section applies to all orders made before or after the commencement of this Act.

Retrospective.

These sub-ss. reproduce C. A., 1881, s. 70 (2), (3).

"Authority of the court."

"Under the authority of the court": *semble*, if the court merely gives leave to exercise a statutory power out of court, for instance, if the court authorises the sale of a mansion house by a tenant for life (S. L. A., 1925, s. 65), the order merely brings the power into force; if the tenant for life has a bad title, a purchaser from him would get no better title by reason of the order, for it is only intended to bind the persons interested under the settlement, not persons claiming by title paramount.

General definitions.

205.—(1) In this Act unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say:—

This s. replaces C. A., 1881, s. 2, and C. A., 1882, s. 1 (4), with amendments. The main definitions are placed in alphabetical order.

(i) "Bankruptcy" includes liquidation by arrangement; also in relation to a corporation means the winding up thereof;

Liquidation. Winding up.

As to liquidation by arrangement: Bkcy. A., 1914, ss. 16, 17.

As to the definition in C. A., 1881, s. 2 (xv): *Horsey Estate, Ltd.* v. *Steiger*, 1899, 2 Q. B. 79; *Fryer* v. *Ewart*, 1902, A. C. 187.

(ii) "Conveyance" includes a mortgage, charge, lease, assent, vesting declaration, vesting instrument, disclaimer, release and every other assurance of property or of an interest therein by any instrument, except a will; "convey" has a corresponding meaning; and "disposition" includes a conveyance and also a devise, bequest, or an appointment of property contained in a will; and "dispose of" has a corresponding meaning;

"Conveyance."

See exceptions to this definition of conveyance for the purposes of the implied covenants, s. 76 (5), 77 (3), *sup.* A deed is no longer an essential part of the definition, but see s. 52, *sup.*

Semble, the grant of an exclusive licence to manufacture and sell a patented article is not a "conveyance": *Guyot* v. *Thomson*, 1894, 3 Ch. 388, 398.

The definitions of "disposition" and "dispose of" are new.

As to the effect of the word "includes" in an interpretation clause in an Act, see *Robinson* v. *Local Board of Barton-Eccles*, 1883, 8 A. C. 798, 801; *Rodger* v. *Harrison*, 1893, 1 Q. B. 161, 167; for effect of the word "means," see *Re Potts*, 1893, 1 Q. B. 648, 658.

(iii) "Building purposes" includes the erecting and improving of, and the adding to, and the repairing of buildings; and a "building lease" is a lease for building purposes or purposes connected therewith;

"Building purposes."

Compare S. L. A., 1925, s. 117 (1) (i), and see note thereto.

(iv) "Death duty" means estate duty, succession duty, legacy duty, and every other duty leviable or payable on a death;

"Death duty."

This definition is new; see ss. 16—18, *sup.*

(v) "Estate owner" means the owner of a legal estate, but an infant is not capable of being an estate owner;

"Estate owner."

See s. 1 (4); this repeats the definition.

"Legal estate": s. 1 (1), (2), (4), *sup.*, and note thereto, and para. (x), *inf.*

"Infant": see also s. 1 (6), *sup.*, and note thereto; also ss. 19—21; 1st Sch., Pt. II., para. 7 (g); Pt. III.; S. L. A., 1925, ss. 1, 19 (3), 26, 27; 2nd Sch., para. 3; Jud. A., 1925, s. 165.

(vi) "Gazette" means the London Gazette;

(vii) "Incumbrance" includes a legal or equitable mortgage and a trust for securing money, and a lien, and a charge of a portion, annuity, or other capital or annual sum; and "incumbrancer" has a meaning corresponding with that of incumbrance, and includes every person entitled to the benefit of an incumbrance, or to require payment or discharge thereof;

"Incumbrance."

This reproduces C. A., 1881, s. 2 (vii); see also 1st Sch., Pt. IV., para. 1 (12).

(viii) "Instrument" does not include a statute, unless the statute creates a settlement;

"Instrument."

Compare S. L. A., 1925, s. 117 (1) (viii), and see note thereto. See "by any instrument" in definition of "conveyance." *Cf.* sub-s. (2), *inf.*, as respects equitable interests arising under a statute or by operation of law.

(ix) "Land" includes land of any tenure, and mines and minerals, whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments; also a manor, an advowson, and a rent and other incorporeal hereditaments, and

an easement, right, privilege, or benefit in, over, or derived from land; but not an undivided share in land; and "mines and minerals" include any strata or seam of minerals or substances in or under any land, and powers of working and getting the same but not an undivided share thereof; and "manor" includes a lordship, and reputed manor or lordship; and "hereditament" means any real property which on an intestacy occurring before the commencement of this Act might have devolved upon an heir;

"Land." "Whether the division," &c.: see also T. A., 1925, s. 12 (2). As to separate dealings with surface and minerals: s. 92, *sup.*; S. L. A., 1925, s. 50.

This definition of "land" replaces C. A., 1881, s. 2 (ii), with amendments; an undivided share is excluded by reason of the statutory trust for sale imposed by ss. 34—36, *sup.*; 1st Sch., Pt. IV., *inf.*; and S. L. A., 1925, s. 36; but see the words "unless the context otherwise requires": sub-s. (1), *sup.*

Mines and minerals, and hereditament. The definitions of "mines and minerals" and "hereditament" are new.

Reputed manor. Courts baron. Where all the freehold estates held of a lord are purchased by him or devolved on him by escheat (escheat is abolished: Ad. of E. A., 1925, s. 45), whereby the services become extinct, the manor ceases to exist; also, there cannot be a manor without a court baron, and no court baron can be held without at least two freeholders as suitors. In case there be not two suitors, the manor becomes a reputed manor, or manor in reputation, and continues to have certain rights and franchises which were appendant to the manor (1 Cruise, Dig. p. 34), as the right to wrecks, estrays, &c.: 1 Watk. Cop. 22; and the right to appoint a sexton of a parish: *Soane* v. *Ireland*, 1808, 10 East, 259. If there be but one free tenant the seignory as to him remains with respect to his services, though there can be no court held: 1 Watk. Cop. 22. There can be no customary court after 1925, but courts baron remain.

Seignory. If all the demesne lands are disposed of, the manor becomes a seignory: *Moyle Finch's Case*, 1606, 6 Co. Rep. 63a.

"Hereditament." "Real property," namely, property formerly recoverable by a real action: Goodeve, R. P., 5th ed. 7. This definition excludes a personal annuity descendible to heirs: *Stafford* v. *Buckley*, 1750, 2 Ves. Sen. 170.

After 1925 there will not be any hereditaments devolving upon an heir, except in the cases mentioned in Ad. of E. A., 1925, s. 51.

As to the application of the Act to incorporeal hereditaments: s. 201, *sup.*

(x) "Legal estates" mean the estates, interests and charges, in or over land (subsisting or created at law) which are by this Act authorised to subsist or to be created as legal estates; "equitable interests" mean all the other interests and charges in or over land or in the proceeds of sale thereof; an equitable interest "capable of subsisting as a legal estate" means such as could validly subsist or be created as a legal estate under this Act;

"Legal estates." "Legal estates . . . authorised to subsist or to be created": s. 1 (1), (2),

(4), (5), *sup.*; "equitable interests": s. 1 (3), (8); 1st Sch., Pt. I. It should be noted that interests in the "proceeds of sale" of land are included as equitable interests; and see s. 27 (1), *sup.*

"Equitable interests."

Proceeds of sale.

"Capable of subsisting as a legal estate," *i.e.*, which will become legal estates when clothed therewith by the estate owner under s. 3, *sup.*, or S. L. A., 1925, s. 16; *cf. ib.*, s. 117 (1) (xi). For instance, an ultimate remainder in fee simple under a settlement when it falls into possession.

"Capable of subsisting as a legal estate."

(xi) "Legal powers" include the powers vested in a chargee by way of legal mortgage or in an estate owner under which a legal estate can be transferred or created; and "equitable powers" mean all the powers in or over land under which equitable interests or powers only can be transferred or created;

"Legal powers" vested in a mortgagee or estate owner in right of his estate: ss. 1 (7), 7 and 8. Powers of attorney operate by delegation.

Legal and equitable powers.

As to powers vested in a chargee by way of legal mortgage: ss. 87—89, 99—105.

"Equitable powers": ss. 1 (7), (8), 8 (2).

(xii) "Limitation Acts" mean the Real Property Limitation Acts, 1833, 1837 and 1874, and "limitation" includes a trust;

As to the saving of the effect of the Limitation and Prescription As.: s. 12, *sup.*

"Limitation Acts."

Legal limitations are confined to the creation of legal estates in fee simple or for a term of years absolute either by grant (s. 51) or demise (s. 149 (2)), or by reservation (s. 65), or by confirmation of past dealings (s. 66), or by a vesting deed, assent or order, vesting declaration or other assurance operating to transfer or create a legal estate.

What are legal limitations.

All settlements, including wills, take effect by way of trust, though in the case of strict settlements the legal estate will be vested in the tenant for life as trustee of the land. Where there is a trust for sale the legal estate will be vested in the trustees for sale. Assents in writing by personal representatives, whether of a testator or intestate, can pass the legal estate to the person entitled in any capacity, but a conveyance is required in the case of a purchaser from a personal representative.

Equitable limitations.

(xiii) "Lunatic" includes a lunatic whether so found or not, and, in relation to a lunatic not so found, "committee" includes a person on whom the powers of a committee are conferred under section one of the Lunacy Act, 1908; "defective" includes every person affected by the provisions of section one hundred and sixteen of the Lunacy Act, 1890, as extended by section sixty-four of the Mental Deficiency Act, 1913, and for whose benefit a receiver has been appointed;

So far as dealings with property are concerned, the Act deals with cases where either a committee or a receiver has been appointed. The person having the

powers of a committee, where no committee has been appointed, is in this Act referred to as the "receiver."

Lunatics and defectives.

The persons affected by the provisions of the Lunacy A., 1890, s. 116, are:—

(a) Lunatics so found by inquisition;

(b) Lunatics not so found by inquisition for the protection or administration of whose property any order had been made before 29th March, 1890;

(c) Every person lawfully detained as a lunatic, though not so found by inquisition;

(d) Every person not so detained and not found lunatic by inquisition with regard to whom it is proved to the satisfaction of the judge in Lunacy that such person is, through mental infirmity arising from disease or age, incapable of managing his affairs;

(e) Every person with regard to whom it is proved to the satisfaction of the judge in Lunacy by the certificate of a Master, or by the report of the Commissioners, or by affidavit or otherwise, that such person is of unsound mind and incapable of managing his affairs, and that his property does not exceed 2,000*l.* in value, or that the income thereof does not exceed 100*l.* per annum;

(f) Every person with regard to whom the judge is satisfied by affidavit or otherwise that such person is or has been a criminal lunatic and continues to be insane and in confinement.

Under the Mental Deficiency A., 1913, s. 64, these provisions are extended to—

(i) A person sent to or placed in an institution or to or in a certified house or placed under guardianship in accordance with the Mental Deficiency A., 1913.

(ii) A person with regard to whom it is proved to the satisfaction of the judge in Lunacy that he is a defective within s. 1 of that Act.

(xiv) A "mining lease" means a lease for mining purposes, that is, the searching for, winning, working, getting, making merchantable, carrying away, or disposing of mines and minerals, or purposes connected therewith, and includes a grant or licence for mining purposes;

This para. replaces C. A., 1881, s. 2 (xi).

Mining purposes.

"Lease" includes an underlease or other tenancy: para. (xxiii), *inf.*; "grant," *e.g.*, affecting incorporeal rights: *Brown* v. *Peto*, 1900, 2 Q. B. 653, 664; "licence," *e.g.*, to enter and bore. The Act applies to incorporeal hereditaments in the same way, so far as possible, as to land: s. 201; in fact "land" includes incorporeal hereditaments: para. (ix), *sup.*

(xv) "Minister" means the Minister of Agriculture and Fisheries;

Minister.

This definition is new; see Ministry of Agriculture and Fisheries A., 1919.

(xvi) "Mortgage" includes any charge or lien on any property for securing money or money's worth; "legal mortgage" means a mortgage by demise or sub-demise or a charge by way of legal mortgage and "legal mortgagee" has a correspond-

ing meaning; "mortgage money" means money or money's worth secured by a mortgage; "mortgagor" includes any person from time to time deriving title under the original mortgagor or entitled to redeem a mortgage according to his estate, interest or right in the mortgaged property; "mortgagee" includes a chargee by way of legal mortgage and any person from time to time deriving title under the original mortgagee; and "mortgagee in possession" is, for the purposes of this Act, a mortgagee who, in right of the mortgage, has entered into and is in possession of the mortgaged property; and "right of redemption" includes an option to repurchase only if the option in effect creates a right of redemption;

"Mortgagee," &c.

This para. replaces C. A., 1881, s. 2 (vi), with amendments; the definitions of "legal mortgage," "legal mortgagee," and "right of redemption" are new.

The definition of "mortgage" now includes a lien, confirming *Everitt* v. *Automatic Weighing Machine Co.*, 1892, 3 Ch. 506 (lien under articles of association on shares of members).

Persons entitled to redeem.

As to the persons entitled to redeem, see *Tarn* v. *Turner*, 1888, 39 Ch. D. 456; Seton, 7th ed. 1861—1863. A mortgagor who has absolutely assigned the equity of redemption acquires a new right to redeem upon being sued by the mortgagee: *Kinnaird* v. *Trollope*, 1888, 39 Ch. D. 636.

A subsequent mortgagee is, relatively to a prior mortgagee, a mortgagor, by virtue of this definition of "mortgagor": *Teevan* v. *Smith*, 20 Ch. D. 724, 730. But for the purposes of ss. 99 and 100 of this Act the expression "mortgagor" does not include an incumbrancer deriving title under the original mortgagor: s. 99 (18), s. 100 (12).

Option creating right of redemption.

As to when a transaction purporting to create an option of repurchase is treated as a mortgage: *Williams* v. *Owen*, 1840, 5 Myl. & Cr. 303; and see *Kreglinger* v. *New Patagonia Co., Ltd.*, 1914, A. C. 25, 47.

(xvii) "Notice" includes constructive notice;

Notice.

This definition is new.

As to registration constituting actual notice: ss. 197, 198. As to restrictions on constructive notice: s. 199 and note thereto. See also ss. 2 (5), 10, 44 (5), (7), (8), 94, *sup.*

(xviii) "Personal representative" means the executor, original or by representation, or administrator for the time being of a deceased person, and as regards any liability for the payment of death duties includes any person who takes possession of or intermeddles with the property of a deceased person without the authority of the personal representatives or the court;

Personal representative.

"Liability for payment of death duties": s. 16, *sup.*

"Intermeddles": the definition as respects death duties includes an executor *de son tort: cf.* Ad. of E. A., 1925, s. 55 (1) (xi).

(xix) "Possession" includes receipt of rents and profits or the right to receive the same, if any; and "income" includes rents and profits;

"Possession," "income."

This para. reproduces C. A., 1881, s. 2 (iii), with an amendment to make possession include the right to rents and profits.

As to conveyances passing the "possession," without actual entry: s. 51; as to reservations: s. 65; as to demises: s. 149 (2).

As to saving of rights of persons in possession or actual occupation: s. 14.

(xx) "Property" includes any thing in action, and any interest in real or personal property;

"Property."

This para. reproduces C. A., 1881, s. 2 (1), with amendments.

As to the meaning of "thing in action": *Colonial Bank* v. *Whinney,* 1886, 11 App. Cas. 426, 440 (personal chattels not in possession: shares transferable by deed); Sweet, L. Dict., tit. "Chose," 147; 4 Hals. L. of E. 360.

(xxi) "Purchaser" means a purchaser in good faith for valuable consideration and includes a lessee, mortgagee or other person who for valuable consideration acquires an interest in property except that in Part I. of this Act and elsewhere where so expressly provided "purchaser" only means a person who acquires an interest in or charge on property for money or money's worth; and in reference to a legal estate includes a chargee by way of legal mortgage; and where the context so requires "purchaser" includes an intending purchaser; "purchase" has a meaning corresponding with that of "purchaser"; and "valuable consideration" includes marriage but does not include a nominal consideration in money;

This para. reproduces C. A., 1881, s. 2 (viii), with amendments.

"Purchaser," &c.

"Lessee": para. (xxiii), *inf.;* "mortgagee": para. (xvi), *sup.; Lloyds Bank* v. *Bullock,* 1896, 2 Ch. 192, 197; "property": para. (xx), *sup.;* "elsewhere": s. 157, *sup.;* "chargee by way of legal mortgage": s. 87, *sup.*

Good faith.

The provisions of this Act in favour of purchasers only apply in favour of purchasers in good faith; this requirement is new, but declaratory. It is conceived that a purchaser is acting in good faith if he acts honestly, whether he is negligent or not: *cf.* Bills of Exchange A., 1882, s. 90.

Valuable consideration.

The definition of "valuable consideration" is new; as to valuable consideration in general: *Currie* v. *Misa,* 1875, L. R. 10 Ex. 153, 162, adopted in *Fleming* v. *Bank of New Zealand,* 1900, A. C. 577, 586. The object is to rule out a nominal consideration of, say, 10*s.* As to marriage consideration: 1 Vaizey, 70 *et seq.*

(xxii) "Registered land" has the same meaning as in the Land Registration Act, 1925, and "Land Registrar" means the Chief Land Registrar under that Act;

Under L. R. A., 1925, s. 3 (xxiv), "registered land" means land or any estate or interest in land, the title to which is registered under that Act, or any enactment replaced by that Act, namely, the L. T. As., 1875, 1897. Registered land.

(xxiii) "Rent" includes a rent service or a rentcharge, or other rent, toll, duty, royalty, or annual or periodical payment in money or money's worth, reserved or issuing out of or charged upon land, but does not include mortgage interest; "rentcharge" includes a fee farm rent; "fine" includes a premium or foregift and any payment, consideration, or benefit in the nature of a fine, premium or foregift; "lessor" includes an underlessor and a person deriving title under a lessor or underlessor; and "lessee" includes an underlessee and a person deriving title under a lessee or underlessee, and "lease" includes an underlease or other tenancy;

This para. reproduces C. A., 1881, s. 2 (ix), with amendments; the definitions of "rentcharge," "lessor," "lessee," and "lease" are new. "Rent," &c.

"Rent service" is rent incident to the relationship of landlord and tenant: while on the grant of a rentcharge, the grantor has no reversion.

The word "rent" is not used in this Act in its strict sense: *Brown* v. *Peto*, 1900, 2 Q. B. 653, 664.

There may be a reservation of rent in kind: see Co. Litt. 142a; *Rex* v. *Earl Pomfret*, 1816, 5 M. & S. 139, 143; *Re Moody & Yates*, 1885, 30 Ch. D. 344, pp. 346-7. As to fee farm rents, see Co. Litt. 143b; 24 Hals. L. of E. 285, 467.

As to the meaning of "fine," see *Waite* v. *Jennings*, 1906, 2 K. B. 11, 15, 18; and note to s. 143, *inf.* "Fine."

As to "premium," *cf. King* v. *Earl Cadogan*, 1915, 3 K. B. 485. "Premium."

It is to be noted that the definition includes an underlease, or a tenancy; certain tenancies may be made by parol: s. 54 (2); or, in cases where the lessor is tenant for life, by writing: S. L. A., 1925, s. 42 (5). Lease, &c.

(xxiv) "Sale" includes an extinguishment of manorial incidents, but in other respects means a sale properly so called;

As to extinguishment of manorial incidents: L. P. A., 1922, Pt. VI. But ss. 44, 45, 47 and 50 apply to exchanges as well as to sales. Sale.

(xxv) "Securities" include stocks, funds and shares;

This para. replaces C. A., 1881, s. 2 (xiv). Securities.

(xxvi) "Tenant for life," "statutory owner," "settled land," "settlement," "vesting deed," "subsidiary vesting deed," "vesting order," "vesting instrument," "trust instrument," "capital money," and "trustees of the settlement" have the same meanings as in the Settled Land Act, 1925;

"Tenant for life," &c.

As to "tenant for life": S. L. A., 1925, ss. 117 (1) (xxviii), 19—22, 25; "statutory owner": *ib.*, ss. 117 (1) (xxvi), 23, 24, 26—29; "settled land": *ib.*, ss. 117 (1) (xxiv), 2; "settlement": *ib.*, ss. 117 (1) (xxiv), 1; "vesting deed": *ib.*, ss. 117 (1) (xxxi), 4—7; "subsidiary vesting deed": *ib.*, s. 10; "vesting order," "vesting instrument," "trust instrument": *ib.*, ss. 117 (1) (xxxi), 4—13; "capital money": *ib.*, ss. 117 (1) (ii), 73—82; "trustees of the settlement": ss. 117 (1) (xxiv), 30—35. For "entailed interest": s. 130, *sup.*

"Entailed interest."

(xxvii) "Term of years absolute" means a term of years (taking effect either in possession or in reversion whether or not at a rent) with or without impeachment for waste, subject or not to another legal estate, and either certain or liable to determination by notice, re-entry, operation of law, or by a provision for cesser on redemption, or in any other event (other than the dropping of a life, or the determination of a determinable life interest); but does not include any term of years determinable with life or lives or with the cesser of a determinable life interest, nor, if created after the commencement of this Act, a term of years which is not expressed to take effect in possession within twenty-one years after the creation thereof where required by this Act to take effect within that period; and in this definition the expression "term of years" includes a term for less than a year, or for a year or years and a fraction of a year or from year to year;

This definition is new; it is required for the purpose of ascertaining what is or is not a legal estate. "At a rent": para. (xxiii), *sup.*; "legal estate": para. (x), *sup.*

"Term of years absolute."

As to a term of years absolute being a legal estate: s. 1, *sup.*

As to terms for life or lives or for years determinable with life or lives: s. 149 (6), *sup.*

"Where required . . . to take effect": see restriction on terms of years created or agreed to be created *in futuro*, s. 149 (3).

Not terminable with life.

The main points to note are that a term of years absolute need not take effect in immediate possession, and does not include a term terminable with life, though there is no objection to an express power being given to a lessor or

lessee to terminate a lease by notice after the death of a named person. The term does not cease by reason of the death, but on account of the notice.

"Subject or not to another legal estate," there may be any number of concurrent legal terms: see note to s. 149 (5), *sup.*; a term may take effect subject to a legal rentcharge or an easement. Concurrent legal estates.

The express definition of "term of years" is only required for the purpose of expanding the meaning of the main definition, so as, for instance, to include a tenancy from year to year, or a weekly tenancy. "Term of years."

Compare definition of "lease": (xxiii), *sup.*

(xxviii) "Trust Corporation" means the Public Trustee or a corporation either appointed by the court in any particular case to be a trustee or entitled by rules made under subsection (3) of section four of the Public Trustee Act, 1906, to act as custodian trustee; 6 Edw. 7, c. 55.

This definition is new.

As to appointment of trustees by the court: S. L. A., 1925, s. 34; T. A., 1925, s. 41; and as to remuneration of a corporation trustee: *ib.*, s. 42. Trust corporation.

For the Public Trustee Rules, 1912, see W. N. 1912, Misc. 173. Rule 30 provides as follows:—"Any incorporated banking or insurance or guarantee or trust company or other body corporate for the time being empowered (by the Act of Parliament, charter, memorandum of association, deed of settlement or other instrument constituting it or defining its powers) to undertake trusts shall be entitled to act as custodian trustee, but for so long a time only as such body corporate shall not, by any prospectus, circular, advertisement or other document issued by it or on its behalf, state or hold out that any liability attaches to the Public Trustee or to the Consolidated Fund of the United Kingdom in respect of any act or omission of such body corporate when so acting."

(xxix) "Trust for sale," in relation to land, means an immediate binding trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without a power at discretion to postpone the sale; "trustees for sale" mean the persons (including a personal representative) holding land on trust for sale; and "power to postpone a sale" means power to postpone in the exercise of a discretion;

This definition is new. The distinction between a trust and power of sale becomes of paramount importance.

The fact that the trust cannot be exercised without the consent of a person does not prevent its being a trust for sale: *Re Wagstaff's S. E.*, 1909, 2 Ch. 201. Trust for sale.

A trust either to retain or sell land is a trust for sale: s. 25 (4), *sup.*; *Re Crips*, 1906, 95 L. T. 865; *Re Johnson*, 1915, 1 Ch. 435. It is conceived that this sub-s., in effect, overrules *Re Hotchkys*, 1886, 32 Ch. D. 408.

As to implied power to postpone: s. 25 (1), *sup.*; and as to trust for sale in case of a personal representative on intestacy: Ad. of E. A., 1925, s. 33.

For a list of implied trusts for sale, see note to s. 23, *sup.*

(xxx) "United Kingdom" means Great Britain and Northern Ireland;

"United Kingdom."

See Irish Free State Constitution A., 1922.

(xxxi) "Will" includes codicil.

Will.

This replaces C. A., 1881, s. 2 (xii).

(2) Where an equitable interest in or power over property arises by statute or operation of law, references to the creation of an interest or power include references to any interest or power so arising.

Equitable interests and powers arising by statute or operation of law.

An equitable interest arises by operation of law in the case of resulting, implied or constructive trusts: s. 53 (2), *sup.*

This sub-s. has special reference to s. 2 (2), *sup.*, to enable an equitable interest, though created by statute, to be overreached by means of a trust for sale *ad hoc.*

(3) References to registration under the Land Charges Act, 1925, apply to any registration made under any other statute which is by the Land Charges Act, 1925, to have effect as if the registration had been made under that Act.

Registration of land charges, &c.

See as to registration in companies register, L. C. A., 1925, s. 10 (5); as to registration in Yorkshire, *ib.*, s. 10 (6); and as to registration under the L. C. As., 1888 and 1900, the L. C. A., 1925, s. 24.

This sub-s. has special reference to s. 198 (registration to be notice) and s. 199 (1) (restrictions on effect of notice); see also s. 94 (as to the effect of notice when a further advance is made) and s. 97 (priorities of puisne mortgages).

Forms of instruments and examples of abstracts.

206.—(1) Instruments in the form of, and using the expressions in the forms given in the Fifth Schedule to this Act, or in the like form or using expressions to the like effect, shall, in regard to form and expression be sufficient.

(2) Examples of abstracts of title framed in accordance with the enactments which will take effect at the commencement of this Act are contained in the Sixth Schedule to this Act.

Sub-s. (1) replaces C. A., 1881, s. 57, though the scheduled forms are new; sub-s. (2) is new.

Forms.

The forms referred to are not in any way directory. They are merely illustrative of the modes in which the Act may be applied in practice.

Protection of solicitors.

As to protection of solicitors in respect of the use of forms framed in accordance with this Act, see s. 182, *sup.*; and as to preparation of abstracts, s. 10, *sup.*

207. The Acts mentioned in the Seventh Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule:

Repeals as respects England and Wales.

Provided that, without prejudice to the provisions of section thirty-eight of the Interpretation Act, 1889:—

52 & 53 Vict. c. 63.

The Interp. A., 1889, s. 38, is as follows:—

Effect of repeals.

"38.—(1) Where this Act or any Act passed after the commencement of this Act repeals and re-enacts, with or without modification, any provisions of a former Act, references in any other Act to the provisions so repealed, shall, unless the contrary intention appears, be construed as references to the provisions so re-enacted.

"(2) Where this Act or any Act passed after the commencement of this Act repeals any other enactment, then, unless the contrary intention appears, the repeal shall not—

"(a) revive anything not in force or existing at the time at which the repeal takes effect; or,

"(b) affect the previous operation of any enactment so repealed or anything duly done or suffered under any enactment so repealed; or,

"(c) affect any right, privilege, obligation, or liability acquired, accrued, or incurred under any enactment so repealed; or,

"(d) affect any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment so repealed; or,

"(e) affect any investigation, legal proceeding, or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture, or punishment as aforesaid:

"and any such investigation, legal proceeding, or remedy may be instituted, continued, or enforced, and any such penalty, forfeiture, or punishment may be imposed, as if the repealing Act had not been passed."

See also *Hamilton Gell* v. *White*, 1922, 2 K. B. 422.

(a) Nothing in this repeal shall affect the validity or legality of any dealing in property or other transaction completed before the commencement of this Act, or any title or right acquired or appointment made before such commencement, but, subject as aforesaid, this Act shall, except where otherwise expressly provided, apply to and in respect of instruments whether made or coming into operation before or after such commencement:

Special provisions as to repeal.

"Transaction completed before the commencement of this Act": thus, the Statute of Uses operates to transfer legal estates under conveyances made before 1926, though legal estates so acquired may be shifted by the provisions in 1st Sch.

"Appointment made before such commencement": for instance, an appointment which under s. 1 (7) would, after 1925, only pass an equitable interest may, if made before 1926, pass an estate (*e.g.*, a life estate) then capable of subsisting at law, but which under 1st Sch., Pt. I., will become an equitable interest.

Instruments made before or after 1926.

Primâ facie the Act applies to instruments (s. 205 (1) (viii)) whenever made; this saves having to state this in each s.; for exceptions, see, *e.g.*,

ss. 60 (words of limitation), 61 (meaning of certain expressions). Again, ss. 85-7 obviously only apply to mortgages made after 1925, for 1st Sch., Pts. VII. and VIII., deal with mortgages made before 1926.

(b) Nothing in this repeal shall affect any rules, orders, or other instruments made under any enactment so repealed, but all such rules, orders and instruments shall continue in force as if made under the corresponding enactment in this Act:

Saving of rules.

The rules as to acknowledgment of deeds by married women (Wolst., 10th ed., 172) are repealed: see s. 167, *sup.*

The rules as to official certificates of search (Wolst., 10th ed., 174) will be replaced by the Land Charges Rules and Fee Order of 1925, and the Local Land Charges Rules, 1925: see Vol. II.

Similarly the rules (Wolst., 10th ed., 175) under s. 48 of the C. A., 1881 (filing of powers of attorney), will be replaced by rules made by the Master of the Rolls; see also s. 125, *sup.*

(c) References in any document to any enactment repealed by this Act shall be construed as references to this Act or to the corresponding enactment in this Act.

References to repealed enactments.

Thus, the references to the C. A., 1881, in the L. P. A., 1922, ss. 132 (4), 133 (1), 143 (3), 15th Sch., para. 18, and in 133 (3) the reference to Pt. VII. of that Act, will be construed as references to the corresponding ss. in this Act.

Similarly, references in deeds, *e.g.*, to the power for mortgagees to sell, given by C. A., 1881, s. 19, will be construed as referring to s. 101, *sup.*; see also ss. 88, 89 and 104.

Application to the Crown.

208.—(1) Nothing in this Act shall be construed as rendering any property of the Crown subject to distress, or liable to be taken or disposed of by means of any distress.

(2) This Act shall not in any manner (save as otherwise expressly provided, and except so far as it relates to undivided shares, joint ownership, leases for lives or leases for years terminable with life or marriage) affect or alter the descent, devolution or tenure or the nature of the estates and interests of or in any land for the time being vested in His Majesty either in right of the Crown or of the Duchy of Lancaster or of or in any land for the time being belonging to the Duchy of Cornwall and held in right or in respect of the said Duchy, but so nevertheless that, after the commencement of this Act, no estates, interests or charges in or over any such lands as aforesaid shall be conveyed or created, except such

estates, interests or charges as are capable under this Act of subsisting or of being conveyed or created.

(3) Subject as aforesaid the provisions of this Act bind the Crown.

This s. is new.

Distress. Sub-s. (1) excepts the Crown property from the remedy of distress under ss. 121, 190: see *Sec. of State for War* v. *Wynne*, 1905, 2 K. B. 845.

Crown lands. As to descent and devolution of Crown lands: Ad. of E. A., 1925, s. 57 (2).

Undivided shares, leases for lives. Land held by the Crown and a subject in undivided shares will become subject to a trust for sale: 1st Sch., Pts. IV.—VI., ss. 34—38. As to leases for lives, &c.: s. 149 (6), *sup.* *Semble*, the Crown and a subject cannot be joint tenants: 6 Hals. L. of E. 493; but before 1926 could hold in undivided shares: *ib.*

Mortgages. "Nature of estates, &c. of or in land": it is conceived that mortgages (if any) belonging to the Crown must be within 1st Sch., Pts. VII. and VIII.; it is the mortgage debt which is held "in right of the Crown," &c., not the interest in the land. Pt. IV. of the 1st Sch. (relating to undivided shares) clearly binds the Crown, and under para. 1 (8), incumbrances affecting the entirety are expressly vested in mortgagees for terms of years absolute; thus, the Crown being a mortgagee would take a mortgage term.

Creation of estates, &c. after 1925. After 1925 the Crown will only be able to convey or create such legal estates (*i.e.*, estates in fee simple in possession and terms of years absolute) as are authorised by this Act; the Crown can only create legal mortgages either by demise, sub-demise or charge by way of legal mortgage. If the Crown could (though it is conceived it could not) hold a fee simple or a head term as mortgagee it could not transfer the fee or the head term subject to redemption; such an assurance would operate as a demise or sub-demise: ss. 85 (2), 86 (2), *sup.*; for "mortgagee" includes a transferee: s. 205 (1) (xvi).

Short title, commencement, extent. **209.**—(1) This Act may be cited as the Law of Property Act, 1925.

(2) This Act shall come into operation on the first day of January, nineteen hundred and twenty-six.

(3) This Act extends to England and Wales only.

"Come into operation": this is construed as coming into operation immediately on the expiration of 31st December, 1925: Interp. A., 1889, s. 36 (2).

Northern Ireland. It is conceived that when this Act has been in force, with the rules thereunder, for a sufficient time to test its operation, it will be adopted in Northern Ireland with such modifications as may be requisite.

SCHEDULES.

Section 39.

FIRST SCHEDULE.

Transitional Provisions.

Part I.

Conversion of certain existing Legal Estates into Equitable Interests.

All estates, interests and charges in or over land, including fees determinable whether by limitation or condition, which immediately before the commencement of this Act were estates, interests or charges, subsisting at law, or capable of taking effect as such, but which by virtue of Part I. of this Act are not capable of taking effect as legal estates, shall as from the commencement of this Act be converted into equitable interests, and shall not fail by reason of being so converted into equitable interests either in the land or in the proceeds of sale thereof, nor shall the priority of any such estate, charge or interest over other equitable interests be affected.

Conversion of certain existing legal estates into equitable interests.

This Part supplements s. 1 (3), *sup.*; terms of years subsisting under settlements are also converted into equitable interests by S. L. A., 1925, 2nd Sch., para. 1 (6).

"Legal estates": ss. 1 (1), (2), (4) and 205 (1) (x), *sup.*, and see notes thereto; "equitable interests": ss. 1 (3) and 205 (1) (x), *sup.*

Fees determinable.

As to fees determinable by limitation or condition: Challis, R. P., 2nd ed., ch. xvii.; fees simple liable to be divested by statute, or liable to determine by reason of the dissolution of a corporation, remain legal estates: s. 7 (1), (2), *sup.* A person entitled to a base fee, or a fee determinable by limitation or condition, has the powers of a tenant for life: S. L. A., 1925, ss. 20 (1) (iii), 117 (1) (iv); hence under Part II. of this Sch. acquires the entire fee simple as a trustee.

"Shall not fail": as to the saving of limitations which might take effect as legal limitations, see note to s. 161, *sup.*

"Proceeds of sale": as to undivided shares taking effect behind a trust for sale, see Part IV. of this Sch.

Priorities.

"Priority": the existing priority acquired (*e.g.*, by tacking) by a person who has obtained a legal estate before 1926 is not affected; see also para. 7 (h) of Part II.; but a "puisne mortgage," though converted into a legal mortgage (Pt. VII., para. 6, and Pt. VIII., para. 5), should be protected by the registration of a land charge.

Part II.

Vesting of Legal Estates.

1. Where the purposes of a term of years, created or limited out of leasehold land, are satisfied at the commencement of this Act, that term shall merge in the reversion expectant thereon and shall cease accordingly; but where the term was vested in the owner of the reversion, the merger and cesser shall take effect without prejudice to any protection which would have been afforded to the owner for the time being of that reversion had the term remained subsisting.

Where the purposes are satisfied only as respects part of the land comprised in a term, this provision has effect as if a separate term had been created in regard to that part of the land.

Satisfied terms limited out of leaseholds extinguished.

This para. extinguishes satisfied terms limited out of leaseholds, without prejudice to any protection afforded thereby to the reversioner: see s. 5, *sup.*, and note thereto.

Cf. as to registered land, L. R. A., 1925, s. 69 (2).

Importance of vesting provisions.

The importance of the vesting provisions in this Part of this Sch. cannot well be over-estimated. On them will depend the proper working of the new practice as respects interests subsisting at the commencement of the Act. In the case of many titles a new start is made. In view of s. 42, *sup.*, the legal estates acquired under this Sch. must not be lost sight of.

2. Where immediately after the commencement of this Act any owner of a legal estate is entitled, subject or not to the payment of the costs of tracing the title and of conveyance, to require any other legal estate in the same land to be surrendered, released or conveyed to him so as to merge or be extinguished, the last-mentioned estate shall by virtue of this Part of this Schedule be extinguished, but without prejudice to any protection which would have been afforded to him had that estate remained subsisting.

Legal estates liable to be extinguished.

This para. applies to outstanding legal estates liable to be merged or extinguished, by surrender, release or conveyance.

Thus if a person who is or, by virtue of the statutory vesting provisions in this Sch. or in S. L. A., 1925, 2nd Sch., becomes an estate owner, and is also beneficially entitled to a term or rentcharge or easement affecting his legal estate, it would be extinguished under this para. This would not, however, deprive a tenant for life of his right to require a mortgage term to be kept on foot: s. 116, *sup.*

This para. does not vest property subject to a contract for sale in the purchaser: para. 7 (j), *inf.*

Object of paras. 1 & 2.

The object of this and the last para. is to clear off interests which should not be kept on foot, leaving only effective estates to be vested under the subsequent provisions in the person entitled thereto under the new law.

"Immediately after, &c."

All the vesting paras. speak of the time "immediately after" 1925 to enable the other changes in the law, *e.g.*, with respect to legal estates and tenure, to have prior operation; see also s. 202, *sup.*

3. Where immediately after the commencement of this Act any person is entitled, subject or not to the payment of the costs of tracing the title and of conveyance, to require any legal estate (not vested in trustees for sale) to be conveyed to or otherwise vested in him, such legal estate shall, by virtue of this Part of this Schedule, vest in manner hereinafter provided.

This paragraph shall (without prejudice to any claim, in respect of fines, fees, and other customary payments) apply to a person who, under a surrender or any disposition having the effect of a surrender, or under a covenant to surrender or otherwise, was, immediately before the commencement of this Act, entitled to require a legal customary estate of inheritance to be vested in him, or who, immediately after such commencement becomes entitled to enfranchised land.

Other legal estates not vested in trustees for sale.

This para. applies to legal estates (ss. 1 and 205 (1) (x)) not vested in trustees for sale. In the case of legal estates vested in trustees for sale, the trust for sale remains exerciseable: s. 23, *sup.*; for instance, the settlor may have left the United Kingdom and vested the land in trustees for sale to deal with during his absence; he does not desire the trust for sale to be determined.

Fraudulent dealings by a nominee whose legal estate has been divested.

If before 1925 A. acquires land, but has it conveyed to B., a mere nominee without a trust for sale, and without disclosing any trust, the legal estate will, under this Sch., vest in A., the beneficial owner. If A. negligently leaves the conveyance and any other title deeds with B., and B. fraudulently mortgages the land to C., the latter will not obtain a legal charge or mortgage term, but will be protected under s. 13 by reason of the deposit of the title deeds, unless he could have discovered that A. was in possession. An attempted sale by B. would be fatuous, for if proper enquiries were made, C. would at once be denied possession or receipt of rents and profits: s. 14; the fraud would be discovered before completion, unless the land were vacant.

Rectification.

This para. would apply in favour of a person entitled to rectification of a deed.

Vesting.

"In manner hereinafter provided": paras. 4—6, *inf.*

"Without prejudice," &c.: the fines and other customary payments are kept on foot subject to the provisions of L. P. A., 1922, Pts. V. and VI.

Enfranchised land.

"Enfranchised land": see L. P. A., 1922, s. 128; for the provisions vesting the enfranchised land in the persons entitled thereto: *ib.*, 12th Sch., as amended; but the provisions in this Sch. will, if conflicting in any way with the 12th Sch. to the L. P. A., 1922, override that Sch.

4. Any person who, immediately after the commencement of this Act, is entitled to an equitable interest capable of subsisting as a legal estate which has priority over any legal estate in the same land, shall be deemed

to be entitled for the foregoing purposes to require a legal estate to be vested in him for an interest of a like nature not exceeding in extent or duration the equitable interest:

Provided that this paragraph shall not—

(a) apply where the equitable interest is capable of being overreached by virtue of a subsisting trust for sale or a settlement;

(b) operate to prevent such person from acquiring any other legal estate under this Part of this Schedule to which he may be entitled.

Vesting in owner of equitable interest capable of subsisting as a legal estate.

"Capable of subsisting as a legal estate": s. 205 (1) (x), *sup.*; "capable of being overreached": ss. 2 and 28, *sup.*; S. L. A., 1925, s. 72; Ad. of E. A., 1925, s. 39. When the equitable interest is capable of being overreached the entire fee simple or term of years absolute will vest in the tenant for life as trustee, or in the trustees for sale or personal representatives.

Interests derived out of the fee simple.

"For the foregoing purposes": this para. extends the operation of the last para. to derivative interests, such as a term of years absolute, an easement, or a rentcharge.

The same person may be entitled to more than one legal estate in the same land; for instance, he may be entitled to a perpetual rentcharge and to a mortgage term in the land out of which the rentcharge issues.

Concurrent legal estates vested in the same person.

5. For the purposes of this Part of this Schedule, a tenant for life, statutory owner or personal representative shall be deemed to be entitled to require to be vested in him any legal estate in settled land (whether or not vested in the Crown) which he is, by the Settled Land Act, 1925, given power to convey.

Settled land.

As to the power to convey settled land, see S. L. A., 1925, s. 72; as to who are tenants for life: *ib.*, ss. 19, 20, 25, 29 and 117 (1) (xxviii); as to who are statutory owners: *ib.*, ss. 23, 26 and 117 (1) (xxvi).

Personal representatives.

As to settled land remaining vested in personal representatives or becoming vested in them before a vesting instrument is executed: *ib.*, 2nd Sch., para. 2; as to their power to convey settled land: *ib.*, s. 26 (during minorities); 2nd Sch., para. 2 (generally); also *ib.*, s. 110 (3) (protection of purchasers dealing with personal representatives). If a tenant for life dies after 1925, before a vesting instrument is executed, there being no S. L. A. trustees or family charges, but merely a remainderman entitled in fee simple; if representation is granted to the estate of the tenant for life, his personal representatives can assent to the fee passing to the remainderman: Ad. of E. A., 1925, ss. 1, 3, 22, 23; for, on the death, the land is not "settled land," and the remainderman is not affected by S. L. A., 1925, s. 13.

Vesting provisions bind the Crown.

This vesting provision binds the Crown, for a person having the powers of a tenant for life can convey the legal estate in the settled land, notwithstanding that the reversion or right of reverter is in the Crown: S. L. A., 1925, s. 20 (4). See also s. 208, *sup.*, and note thereto.

Effect of para.

The general principle is clear. Whatever estate can be conveyed under the S. L. A., 1925, will be vested in the person entitled to convey it; to be settled land within that Act the interest must be a legal estate.

Settlements *ad hoc*.

Under S. L. A., 1925, s. 21, a settlement *ad hoc* may be made to overreach an equitable interest created for money's worth, but that s. only relates to settlements made after 1926; till the settlement is made, the land does not become settled land.

Existence of family charges.

On the other hand, the mere subsistence of a family charge under a settlement creates a settlement: *ib.*, s. 1 (1) (v); the land becomes settled land, and the

absolute owner entitled subject to the charge has the powers of a tenant for life: *ib.*, s. 20.

6. Under the provisions of this Part of this Schedule, the legal estate affected (namely, any estate which a person is entitled to require to be vested in him as aforesaid) shall vest as follows:—

(a) Where at the commencement of this Act land is subject to a mortgage (not being an equitable charge unsecured by any estate), the legal estate affected shall vest in accordance with the provisions relating to mortgages contained in this Schedule;

Vesting of mortgage estates.

See Parts VII. (freeholds) and VIII. (leaseholds) of this Sch.; first and subsequent mortgagees will obtain legal terms or sub-terms, while the mortgagor will take the fee simple or the head term.

"Not being an equitable charge unsecured by any estate": in this case the charge is allowed to remain as an equitable charge.

(b) Where the land is at the commencement or by virtue of this Act or any Act coming into operation at the same time subject or is by virtue of any statute made subject to a trust for sale, the legal estate affected shall vest in the trustees for sale (including personal representatives holding land on trust for sale) but subject to any mortgage term subsisting or created by this Act;

Vesting in trustees for sale.

"By virtue of this Act": Part IV. of this Sch. (relating to undivided shares); "by virtue of any Act coming into operation at the same time": S. L. A., 1925, 2nd Sch., para. 3 (5) (infants); for list of implied trusts for sale, see note to s. 23. "Subject to any mortgage term, &c.": see Parts VII. and VIII. of this Sch. (creating mortgage terms); "subsisting," *i.e.*, mortgage terms created before 1926.

Infants.

The case of infants entitled to legal estates with a person of full age comes within this sub-para. (see s. 19 (2), *sup.*, and Part III. of this Sch., *inf.*), because the land becomes subject to a trust for sale; on the other hand, where the infant is in equity a tenant for life with a person of full age, the next sub-para. applies, for the land is settled land: S. L. A., 1925, s. 19 (3); the person of full age is treated as the tenant for life during the minority.

Joint tenancies.

Beneficial joint tenancies, including tenancies by entireties, come within this sub-para., for a trust for sale is implied: ss. 36, 37, *sup.*; also Part VI. of this Sch., *inf.*

(c) Where at the commencement of this Act or by virtue of any statute coming into operation at the same time the land is settled land, the legal estate affected shall vest in the tenant for life

or statutory owner entitled under the Settled Land Act, 1925, to require a vesting deed to be executed in his favour, or in the personal representative, if any, in whom the land may be vested or the Public Trustee, as the case may require but subject to any mortgage term subsisting or created by this Act;

See notes to para. 5, *sup.*, and to last sub-para.

"Settled land": S. L. A., 1925, ss. 1, 2, 3, 20. Vesting of settled land.

"Personal representatives": as to legal estate in settled land vesting in personal representatives, S. L. A., 1925, 2nd Sch., para. 2.

"Public Trustee": as to vesting in the Public Trustee where the legal estate would be vested in an infant, and there are no trustees of the settlement, S. L. A., 1925, 2nd Sch., para. 3.

"Entitled . . . to require a vesting deed": see S. L. A., 1925, 2nd Sch., para. 1. Notwithstanding that the legal estate vests under this sub-para. in a tenant for life or in the statutory owners, a vesting deed must be executed under that para. as evidence of the ownership of the legal estate; the land cannot be dealt with till the vesting deed is executed: *ib.*, s. 13. Under S. L. A., 1925, 2nd Sch., para. 1 (6), a portions term created by the settlement is converted into an equitable term only when the vesting deed is executed. Vesting deeds.

(d) In any case to which the foregoing sub-paragraphs do not apply the legal estate affected shall vest in the person of full age who, immediately after the commencement of this Act, is entitled (subject or not to the payment of costs and any customary payments) to require the legal estate to be vested in him, but subject to any mortgage term subsisting or created by this Act.

"Person" includes a corporation: Interp. A., 1889, s. 2 (1); this sub-para. is to cover all the remaining cases. Vesting in persons of full age who are entitled.

An infant cannot be an estate owner: s. 1 (6). If an infant is solely entitled for an estate in fee simple or term of years absolute, the land is settled land: S. L. A., 1925, s. 1; so that the land will vest in accordance with sub-para. (c), *sup.*, and S. L. A., 1925, 2nd Sch., para. 3 (legal estates of infants).

In no case under the foregoing provisions is a legal estate vested in an infant; see also para. 7 (g), *inf.* As to the vesting of legal estates of infants, whether entitled beneficially or as trustees, see Pt. III., *inf.*, and notes thereto.

The general object of these transitional vesting provisions is to pass the legal estate to the person who under the new practice will have to make a title. The Sch. operates as if the land had been conveyed to a grantee in fee simple to the use that the different persons interested should have the proper principal and derivative legal estates. General object of the vesting provisions. How they operate.

7. Nothing in this Part of this Schedule shall operate—

(a) To vest in a mortgagee of a term of years absolute

any nominal leasehold reversion which is held in trust for him subject to redemption; or

Nominal leasehold reversions excepted.

The object of reserving a nominal leasehold reversion was that the mortgagee should not become liable to the lessor in respect of the rent and covenants. The mortgagee can now convey to a purchaser this reversion under the statutory or express power of sale, unless expressly excepted with the leave of the court: s. 89 (1), *sup.*; but not where the mortgaged property is part only of the land comprised in the lease, and the rent has not been apportioned: *ib.*, sub-s. (6).

After 1925 a mortgagee cannot take a mortgage by assignment of a term: s. 86, *sup.*

(b) To vest in a mortgagee any legal estate except a term of years absolute; or

Mortgage terms.

See also ss. 85, 86, *sup.*, and Parts VII. and VIII. of this Sch. Subject to any mortgage term, the legal estate will vest in the owner (whether absolute owner, tenant for life, statutory owners, trustees for sale, or personal representatives) of the equity of redemption.

(c) To vest in a person entitled to a leasehold interest, as respects such interest, any legal estate except a term of years absolute; or

Leasehold interests.

The term vested will correspond in extent and duration to that of the equitable leasehold interest: para. 4, *sup.* "As respects such interest," the lessee may be entitled to another legal estate: see note to para. 4, *sup.*

(d) To vest in a person entitled to a rentcharge (either perpetual or held for a term of years absolute) as respects such rentcharge, any legal estate except a legal estate in the rentcharge; or

Person entitled to rentcharge.

"Either perpetual or held for a term of years absolute": thus under s. 1 (2) (b) the person so entitled has an interest capable of being clothed with a legal estate. If a rentcharge for a term is created by a settlement, it will not be clothed with a legal estate if it is capable of being overreached, which it would be unless money has been raised on mortgage of a term for securing the rentcharge: para. 4 (a), *sup.*

(e) To vest in a person entitled to an easement, right or privilege with reference thereto, any legal estate except a legal estate in the easement, right or privilege; or

Owners of easements.

The estate vested will correspond in extent and duration with that in the equitable rentcharge, easement, &c.

As to what can take effect as a legal easement, see s. 187 and note thereto.

(f) To vest any legal estate in a person for an undivided share; or

Undivided shares.

Land held in undivided shares will vest, according to Part IV. of this Sch., and see S. L. A., 1925, s. 36, in trustees for sale, hence those trustees will take the legal estate in the entirety; see also para. 6 (b), *sup.*

(g) To vest any legal estate in an infant; or

Infants.

An infant cannot be an estate owner: ss. 1 (6), 205 (1) (v). As to cases where the legal estate is already vested in an infant, or would have vested in him had he been of full age, see Part III. of this Sch. and S. L. A., 1925, 2nd Sch., para. 3 and note thereto.

See also notes to para. 6 (b) and (c), *sup.*; the legal estate will either vest in personal representatives, or in S. L. A. trustees as statutory owners (or, if none, in the Public Trustee), or in a co-tenant for life of full age, or in trustees for sale, as the case requires.

(h) To affect prejudicially the priority of any mortgage or other incumbrance or interest subsisting at the commencement of this Act; or

Saving of priority of mortgages, &c.

As respects the registration of "puisne mortgages," see L. C. A., 1925, s. 10 (1), Class C. (i) (iii); and Parts VII., para. 6, and VIII., para. 5, of this Sch. As to mortgages formerly affecting copyhold land: L. P. A., 1922, 12th Sch., para. 1 (f).

The mere conversion of a second (equitable) mortgage into a legal term mortgage will not, for instance, affect any priority acquired by tacking before 1926: see s. 94, *sup.*

Though most mortgages will be legal mortgages, notice will be material in regard to the priority of further advances: *ib.*

(i) To render invalid any limitation or trust which would have been capable of taking effect as an equitable limitation or trust; or

Validation of limitations.

As to the validity of interests representing former legal contingent remainders, see s. 161, *sup.*, and note thereto.

This sub-para. deals with the reverse case and removes any doubt whether an equitable interest which is clothed with a legal estate could be affected prejudicially. Thus the equitable interest might have been informally created by an executory instrument, which is only valid by reason of the instrument being executory.

The legal estate acquired under this Part of this Sch. will be held on the requisite trusts, if any: see para. 8, *inf.*

(j) To vest in a purchaser or his personal representatives any legal estate which he has contracted to acquire and in regard to which a contract, including an agreement to create a legal mortgage, is pending at the commencement of this Act, although the consideration may have been paid or satisfied and the title accepted, or to render unnecessary the conveyance of such estate; or

Contracts.

"Purchaser": s. 205 (1) (xxi); "conveyance": *ib.* (ii).

This sub-para. keeps the contract off the title, for it must be completed by a conveyance in the usual way, and the proper stamp duty must be paid.

Title to acquire legal estates

In all cases the necessary evidence must be furnished to show the right (not necessarily the beneficial title, for trustees for sale and personal representatives will take) to acquire a legal estate under this Sch., or the 12th Sch.

under the vesting provisions.

to the L. P. A., 1922 (enfranchised land), or S. L. A., 1925, 2nd Sch., para. 3 (relating to legal estates of infants).

(k) To vest in the managing trustees or committee of management of a charity any legal estate vested in the Official Trustee of Charity Lands; or

Charity estates.

As to the Official Trustee, see Charitable Trusts A., 1853, s. 47; Charitable Trusts Amendment A., 1855, s. 15.

Under S. L. A., 1925, s. 29, the managing trustees are given the powers of a tenant for life; a conveyance of land, vested in the Official Trustee, by the managing trustees, in exercise of the powers conferred by that s., will be executed in the name and on behalf of the Official Trustee: *ib.*, sub-s. (5).

The object of the sub-para. is to prevent the shifting under para. 6 (c) of the legal estate to the managing trustees, who are given the powers of a tenant for life.

(l) To vest in any person any legal estate which failed to pass to him by reason of his omission to be registered as proprietor under the Land Transfer Acts, 1875 and 1897, until brought into operation by virtue of the Land Registration Act, 1925.

Omission to be registered as proprietor.

Under L. T. A., 1897, s. 20, if the purchaser did not register, this left the legal estate outstanding in his vendor; it was not got in by the registration of a second or subsequent purchaser.

On registration after 1925 the proprietor will obtain the legal estate: L. R. A., 1925, s. 69 (3).

8. Any legal estate acquired by virtue of this Part of this Schedule shall be held upon the trusts and subject to the powers, provisions, rents, covenants, conditions, rights of redemption (as respects terms of years absolute) and other rights, burdens and obligations, if any, upon or subject to which the estate acquired ought to be held.

Legal estate vested to be held on corresponding trusts, &c.

"Rents": s. 205 (1) (xxiii); "term of years absolute": *ib.* (xxvii).

This para. imposes the proper trusts; as to enforcement of equitable interests against the estate owner, see s. 3, *sup.*, and S. L. A., 1925, s. 16. The estate owner can, however, only give effect to trusts, &c. of which he has notice: *ib.* Compare ss. 1 (9) and 153 (8), *sup.* Rights of redemption affecting legal estates can only subsist after 1925 in regard to terms of years absolute: Pts. VII. and VIII., *inf.*

9. No stamp duty shall become payable by reason only of any vesting surrender or release effected by this Schedule.

Stamp duty.

The vesting, surrender or release is automatically effected by this Act; hence it is free from stamp duty. In case of settled land, the principal vesting deed to be executed by the trustees under S. L. A., 1925, 2nd Sch., para. 1 (2) or para. 3 (4), will be subject to a 10*s.* fixed stamp: *ib.*, para. 1 (8).

Part III.

Provisions as to Legal Estate vested in Infant.

1. Where immediately before the commencement of this Act a legal estate in land is vested in one or more infants beneficially, or where immediately after the commencement of this Act a legal estate in land would by virtue of this Act have become vested in one or more infants beneficially if he or they had been of full age, the legal estate shall vest in the manner provided by the Settled Land Act, 1925.

Infants beneficially entitled to legal estates.

This para. explains and extends the operation of S. L. A., 1925, 2nd Sch., para. 3, dealing with the vesting of legal estates vested in an infant beneficially. That para. does not apply where the infant is beneficially entitled to a legal estate jointly with a person of full age: *ib.*, para. 3 (5); for that case is dealt with by para. 2, *inf.*; nor does it apply where the infant, if of full age, would constitute a tenant for life with a person of full age; that case is dealt with by S. L. A., 1925, s. 19 (3), and the legal estate will under para. 6 (c) of Part II. of this Sch. vest in the co-tenant for life of full age.

Vesting in S. L. A. trustees or in Public Trustee.

Where S. L. A., 1925, 2nd Sch., para. 3, does apply it vests the legal estate in the trustees of the settlement (*i.e.*, the statutory owners), if any, or, if none, in the Public Trustee till, if at all, other trustees are appointed in his place. It may revert to the infant on attaining twenty-one: *ib.*, para. 3 (1) (v).

Legal estate outstanding.

"Immediately after the commencement of this Act a legal estate in the land would by virtue of this Act," &c.: thus if the legal fee simple were in a mortgagee, the mortgagee will take a mortgage term, and the fee simple would have vested in the infant as entitled to the equity of redemption had he been of full age. Instead of this it vests in the S. L. A. trustees or in the Public Trustee, as above.

Again, if the legal estate is outstanding in a trustee for the infant, it will vest in the S. L. A. trustees or the Public Trustee.

As to making title to an infant's legal estate: S. L. A., 1925, s. 26. If the land is vested in personal representatives, it is not divested: *ib.*

2. Where immediately before the commencement of this Act a legal estate in land is vested in an infant jointly with one or more other persons of full age beneficially, the legal estate shall by virtue of this Act vest in that other person or those other persons on the statutory trusts, but not so as to sever any joint tenancy in the net proceeds of sale or in the rents and profits until sale:

Provided that, if by virtue of this paragraph the legal estate becomes vested in one person as trustee, then, if no other person is able and willing to do so, the parents or parent testamentary or other guardian of the infant, if respectively able and willing to act, (in the order named) may, and at the request of any person interested

shall (subject to the costs being provided for) by writing appoint an additional trustee and thereupon by virtue of this Act the legal estate shall vest in the additional trustee and existing trustee as joint tenants.

Infant beneficially entitled, jointly with persons of full age, to a legal estate.

Trust for sale.

Power to appoint new trustees.

Beneficial joint tenancies.

Outstanding in mortgagee.

This para. imposes a trust for sale in regard to the fee simple or term of years absolute; "statutory trusts": s. 35, *sup.*

The appointment of an additional trustee under this para. should be made by deed under T. A., 1925, s. 36; but no vesting declaration under *ib.*, s. 40, or otherwise, is required; the legal estate is dealt with by this para.

In the case of all beneficial joint tenancies of a legal estate a trust for sale is imposed (unless the land is settled land); hence under s. 36, *sup.*, if the legal estate was outstanding in trustees, they will hold on trust for sale; there is nothing to divest them of the legal estate: Pt. II., paras. 3 and 6 (b), *sup.* But if the legal estate was outstanding in a mortgagee (he only takes a mortgage term under this Sch.), and an infant and a person of full age are jointly entitled to the equity of redemption, a trust for sale is similarly imposed by s. 36, *sup.*, and the legal estate is vested in the trustee for sale of full age, namely, the person jointly entitled with the infant: para. 4, *inf.*; also Pt. II., para. 6 (b); Pt. VII., para. 3, or Pt. VIII., para. 3, *inf.*

3. Where, immediately before the commencement of this Act, a legal estate in land is vested solely in an infant as a personal representative, or a trustee of a settlement, or on trust for sale or on any other trust, or by way of mortgage, or where immediately after the commencement of this Act a legal estate in land would by virtue of any provision of this Act or otherwise have been so vested if the infant were of full age, the legal estate and the mortgage debt (if any) and interest thereon shall, by virtue of this Act, vest in the Public Trustee, pending the appointment of trustees as hereinafter provided—

(a) as to the land, upon the trusts, and subject to the equities affecting the same (but in the case of a mortgage estate for a term of years absolute in accordance with this Act); and

(b) as to the mortgage debt and interest, upon such trusts as may be requisite for giving effect to the rights (if any) of the infant or other persons beneficially interested therein:

Trust and mortgage estates of infants solely entitled.

"Personal representative": s. 205 (1) (xviii), *sup.*; "trustee of a settlement," *i.e.*, S. L. A. trustee: *ib.* (xxvi); "solely in an infant": if there are two or more infants and no person of full age is entitled with them, the para. applies: Interp. A., 1889, s. 1 (1) (b).

"Where immediately after the commencement of this Act a legal estate in land," &c.: thus if the infant is the sole person in whom, having regard to the changes in the law, the trust or mortgage estate could be vested, whether as personal representative, trustee or mortgagee, there is no alternative to the scheme of vesting the legal estate in the Public Trustee; the infant cannot hold a legal estate, or act as a personal representative or trustee.

For instance, if the infant is a sole trustee for sale, subject to a legal mortgage, he cannot take the legal estate which would, if he were of full age, vest in him under Pt. VII., para. 3, or Pt. VIII., para. 3.

The case of an infant executorship can be met by appointing an administrator during the minority: para. 5, *inf.* Administrator during a minority.

If there is a tenant for life or statutory owner, the legal estate will not vest in the Public Trustee: *ib.*

Provided that—

(i) The Public Trustee shall not be entitled to act in the trust, or charge any fee, or be liable in any manner, unless and until requested in writing to act by or on behalf of the persons interested in the land or the income thereof, or in the mortgage debt or interest thereon (as the case may be), which request may be made on behalf of the infant by his parents or parent, or testamentary or other guardian (in the order named), and those persons may, in the order aforesaid (if no other person is able and willing to do so) appoint new trustees in the place of the Public Trustee, and thereupon by virtue of this Act the land or term and mortgage money shall vest in the trustees so appointed upon the trusts and subject to the equities aforesaid: Provided that the Public Trustee may, before he accepts the trust, but subject to the payment of his costs, convey to a person of full age who becomes entitled;

As a fact, the Public Trustee will not, as a general rule, know that any estate has vested in him till he is requested to act. It is conceived that it will be possible for his fees in these cases to be small, and that an acceptance fee will not be charged. Public Trustee not entitled to act till requested.

The power to appoint new trustees will render unnecessary an application to the court. As to the disclosure of trusts affecting mortgage debts: s. 113, *sup.*; also sub-para. (v), *inf.* Power to appoint new trustees.

The trust may be capable of being wound up at once, hence the power to convey without accepting the trust. Power to convey.

(ii) After the Public Trustee has been so requested to act, and has accepted the trust, no trustee shall (except by an order of the court) be appointed in his place without his consent;

Thus the power to appoint new trustees conferred *sup.* should, if exercised at all, be exercised before the trust is accepted. Effect of acceptance.

(iii) Any person interested in the land or the income thereof, or in the mortgage debt or in the interest thereon (as the case may be), may, at any time during the minority, apply to the court for the appointment of trustees of the trust, and the court may make such order as it thinks fit, and if thereby new trustees are appointed the legal estate (but in the case of a mortgage estate only for a term of years absolute as aforesaid) and the mortgage debt (if any) and interest shall, by virtue of this Act, vest in the trustees as joint tenants upon the trusts and subject to the equities aforesaid;

Power for court to appoint new trustees.

This power is only required after the trust has been accepted.

(iv) Neither a purchaser of the land nor a transferee for money or money's worth of the mortgage shall be concerned in any way with the trusts affecting the legal estate or the mortgage debt and interest thereon;

Restriction on notice of trusts.

This supplements s. 113, *sup.*, which only extends to mortgage debts. See also s. 204, *sup.*, as respects jurisdiction.

(v) The vesting in the Public Trustee of a legal estate or a mortgage debt by virtue of this Part of this Schedule shall not affect any directions previously given as to the payment of income or of interest on any mortgage money, but such instructions may, until he accepts the trust, continue to be acted on as if no such vesting had been effected.

Payment of income and interest.

"Income" includes rents and profits: s. 205 (1) (xix), *sup.* This provision will tide over the interregnum.

4. Where, immediately before the commencement of this Act, a legal estate in land is vested in two or more persons jointly as personal representatives, trustees, or mortgagees, and anyone of them is an infant, or where immediately after the commencement of this Act a legal estate in land would, by virtue of this Act, or otherwise have been so vested if the infant were of full age, the legal estate in the land with the mortgage debt (if any)

and the interest thereon shall, by virtue of this Act, vest in the other person or persons of full age—

(a) as to the legal estate, upon the trusts and subject to the equities affecting the same (but in the case of a mortgage estate only for a term of years absolute as aforesaid); and

(b) as to the mortgage debt and interest, upon such trusts as may be requisite for giving effect to the rights (if any) of the infant or other persons beneficially interested therein;

but neither a purchaser of the land nor a transferee for money or money's worth of the mortgage shall be concerned in any way with the trusts affecting the legal estate or the mortgage debt and interest thereon:

Provided that, if, by virtue of this paragraph, the legal estate and mortgage debt, if any, become vested in a sole trustee, then, if no other person is able and willing to do so, the parents or parent, testamentary or other guardian of the infant (in the order named) may, and at the request of any person interested shall, (subject to the costs being provided for) by writing appoint a new trustee in place of the infant, and thereupon by virtue of this Act the legal estate and mortgage money shall vest in the new and continuing trustees upon the trusts and subject to the equities aforesaid.

Vesting of trust and mortgage estates vested in an infant jointly with persons of full age.

An infant cannot be a trustee: s. 20, *sup.* This principle of vesting the legal estate in the persons of full age is adopted throughout: see s. 19, *sup.*; also S. L. A., 1925, s. 19 (3).

"Where immediately after the commencement of this Act a legal estate in land would," &c.: these words are of importance where before 1926 the legal estate is outstanding in a mortgagee and the equity of redemption was vested in an infant and a person of full age: see note to para. 2, *sup.*

Restrictions on notice, appointment of new trustees.

As to the protection of purchasers as respects notice, and as to the appointment of new trustees, see notes to last para.

5. This Part of this Schedule does not affect the estate or powers of an administrator durante minore ætate, nor, where there is a tenant for life or statutory owner of settled land, operate to vest the legal estate therein in the Public Trustee.

Saving of administrators during a minority.

"Administrator *durante minore ætate*": Jud. A., 1925, s. 165; thus if the legal estate is vested in such an administrator, it is not divested.

Saving of right of tenant for life, &c., to have legal estate.

"Tenant for life," "statutory owner": s. 205 (1) (xxvi); S. L. A., 1925, s. 117 (1) (xxvi), (xxviii). A tenant for life (who must be of full age; an infant, for the purposes of legal estates, is no longer treated as a tenant for life: S. L. A., 1925, ss. 19 and 20 (1)) or a statutory owner has an indefeasible right to have the legal estate vested in him: *ib.*, s. 106 (1) (a), (b).

This merely makes it clear that under S. L. A., 1925, 2nd Sch., para. 3 (referred to in para. 1 of this Part), or under para. 3 of this Part of this Sch., the legal estate cannot vest in the Public Trustee if there are S. L. A. trustees (*i.e.*, statutory owners) in whom it is capable of being vested; see also Pt. II., paras. 5 and 6 (c), *sup.*

Part IV.

Provisions subjecting Land held in Undivided Shares to a Trust for Sale.

1. Where, immediately before the commencement of this Act, land is held at law or in equity in undivided shares vested in possession, the following provisions shall have effect:—

(1) If the entirety of the land is vested in trustees or personal representatives (whether subject or not to incumbrances affecting the entirety or an undivided share) in trust for persons entitled in undivided shares, then—

(a) if the land is subject to incumbrances affecting undivided shares or to incumbrances affecting the entirety which under this Act or otherwise are not secured by legal terms of years absolute, the entirety of the land shall vest free from such incumbrances in such trustees or personal representatives and be held by them upon the statutory trusts; and

(b) in any other case, the land shall be held by such trustees or personal representatives upon the statutory trusts;

subject in the case of personal representatives, to their rights and powers for the purposes of administration.

Where entirety vested in trustees or personal representatives.

"Land": s. 205 (1) (ix), *sup.*; the para. applies to land of any tenure; but this Part of this Sch. does not apply to party structures and open spaces: para. 3, *inf.*, and Part V. of this Sch.

"Incumbrance": s. 205 (1) (vii), *sup.*, and sub-paras. (7), (12), *inf.*; the incumbrances divested by this Part are shifted to the proceeds of sale. "Statutory trusts," *i.e.*, a trust for sale, &c.: s. 35, *sup.*; the consent of incumbrancers whose incumbrances are divested is required to a sale, &c.: sub-para. (9), *inf.*; but the purchaser is not concerned: *ib.*

"At law or in equity."

"In equity": the legal estate in a share might be vested either in trustees, personal representatives or mortgagees. The para. is not confined merely to legal estates.

"Vested in possession."

"Vested in possession": where the land after 1926 becomes divisible into undivided shares (for instance, on the death of a tenant for life in possession of the entirety), see S. L. A., 1925, s. 36: also para. 2, *inf.* The expression

does not mean subject merely to a lease, but is used as opposed to being in remainder.

As under this sub-para. the entirety is to vest in independent persons, there is no objection to its vesting in them on trust for sale "free from incumbrances" affecting undivided shares, for those incumbrances are shifted to the proceeds of sale under the "statutory trusts": s. 35. As to the position and powers of mortgagees formerly entitled to an undivided share: s. 102, *sup.*

Whether subject or not to incumbrances, &c.

Mortgages of undivided shares shifted.

Legal mortgages (including legal mortgages created under Parts VII. or VIII. of this Sch.) remain paramount to the trust for sale: sub-paras. (7) and (8), *inf.* It is sufficient to refer to the legal mortgages as "not secured by legal terms of years absolute," for charges by way of legal mortgage can only be created after 1925.

Mortgages of the entirety unaffected.

"Not secured by legal terms of years absolute."

(2) If the entirety of the land (not being settled land) is vested absolutely and beneficially in not more than four persons of full age entitled thereto in undivided shares free from incumbrances affecting undivided shares, but subject or not to incumbrances affecting the entirety, it shall, by virtue of this Act, vest in them as joint tenants upon the statutory trusts.

Settled land is dealt with *inf.*

In this case the entirety is vested in not more than four absolute beneficial owners, subject to any incumbrances affecting the entirety. The sub-para. does not apply if any owner has incumbered his share, for it would not be just that the owners of the equity of redemption should, under the statutory trusts, be able to defeat the incumbrance as they are not independent parties. The case where there are more than four persons interested as absolute beneficial owners is excluded, in order to prevent there being more than four trustees for sale: T. A., 1925, s. 34.

Where entirety is vested in not more than four persons of full age absolutely.

In such a case and also where an absolute owner has charged his share the land vests in the Public Trustee: sub-para. (4), *inf.*

When land vests in the Public Trustee.

(3) If the entirety of the land is settled land (whether subject or not to incumbrances affecting the entirety or an undivided share) held under one and the same settlement, it shall, by virtue of this Act, vest, free from incumbrances affecting undivided shares, and from incumbrances affecting the entirety, which under this Act or otherwise are not secured by a legal term of years absolute, in the trustees (if any) of the settlement as joint tenants upon the statutory trusts.

The vesting in the S. L. A. trustees corresponds to what is done by S. L. A., 1925, s. 36, where the undivided shares fall into possession after 1925. As the trustees are independent persons, there is no objection to the incumbrances affecting the shares being capable of being overreached by them.

Vesting of settled land subject to one settlement.

As to what is "settled land": S. L. A., 1925, ss. 1, 2, 3; for the purposes of this para. it includes land held by an absolute owner subject to family charges, but not land affected by an equitable interest created for money's worth, which

"Settled land."

can only be converted into settled land after 1925 by a settlement *ad hoc* under s. 21.

"Settlement": *ib.*, s. 1; "trustees of the settlement": *ib.*, ss. 30—33; 2nd Sch., para. 3 (3).

Subsequent appointment of S. L. A. trustees.

If S. L. A. trustees are appointed before the Public Trustee has accepted the trust, the land becomes vested in the trustees so appointed: provisoes (iv) and (v), *inf.*

Provided that if there are no such trustees, then—

(i) pending their appointment, the land shall, by virtue of this Act, vest (free as aforesaid) in the Public Trustee upon the statutory trusts;

(ii) the Public Trustee shall not be entitled to act in the trust, or charge any fee, or be liable in any manner, unless and until requested in writing to act by or on behalf of persons interested in more than an undivided half of the land or the income thereof;

(iii) after the Public Trustee has been so requested to act, and has accepted the trust, no trustee shall (except by an order of the court) be appointed in the place of the Public Trustee without his consent;

(iv) if, before the Public Trustee has accepted the trust, trustees of the settlement are appointed, the land shall, by virtue of this Act, vest (free as aforesaid) in them as joint tenants upon the statutory trusts;

(v) if, before the Public Trustee has accepted the trust, the persons having power to appoint new trustees are unable or unwilling to make an appointment, or if the tenant for life having power to apply to the court for the appointment of trustees of the settlement neglects to make the application for at least three months after being requested by any person interested in writing so to do, or if the tenants for life of the undivided shares are unable to agree, any person interested under the settlement may apply to the court for the appointment of such trustees.

Vesting of settled land in Public Trustee.

In the case of settled land held under one settlement this proviso vests the land in the Public Trustee only where there are no S. L. A. trustees. For other cases where the Public Trustee acquires settled land: next para.

Request to Public Trustee to act.

The request to act under this sub-para. may be made by persons interested in more than an undivided half of the land or the income thereof, *e.g.*, by tenants for life of five-eighths.

Appointment of trustees.

The appointment of trustees in (iv) and (v) refers to S. L. A. trustees, though the land will vest in the trustees on trust for sale.

Application to court.

The application under (v), *sup.*, may be made by any person interested, and will be by summons: s. 203 (2), *sup.*; see also S. L. A., 1925, s. 34. It is conceived that the application should be made in the matter of both the Acts.

(4) In any case to which the foregoing provisions of this Part of this Schedule do not apply, the entirety of the land shall vest (free as aforesaid) in the Public Trustee upon the statutory trusts:

Provided that—

(i) The Public Trustee shall not be entitled to act in the trust, or charge any fee, or be liable in any manner, unless and until requested in writing to act by or on behalf of the persons interested in more than an undivided half of the land or the income thereof;

(ii) After the Public Trustee had been so requested to act, and has accepted the trust, no trustee shall (except by an order of the court) be appointed in the place of the Public Trustee without his consent;

(iii) Subject as aforesaid, any persons interested in more than an undivided half of the land or the income thereof may appoint new trustees in the place of the Public Trustee with the consent of any incumbrancers of undivided shares (but so that a purchaser shall not be concerned to see whether any such consent has been given) and vest the land in the persons so appointed (free as aforesaid) upon the statutory trusts; or such persons may (without such consent as aforesaid), at any time, whether or not the Public Trustee has accepted the trust, apply to the court for the appointment of trustees of the land, and the court may make such order as it thinks fit, and if thereby trustees of the land are appointed, the same shall by virtue of this Act, vest (free as aforesaid) in the trustees as joint tenants upon the statutory trusts;

(iv) If the persons interested in more than an undivided half of the land or the income

thereof do not either request the Public Trustee to act, or (whether he refuses to act or has not been requested to act) apply to the court for the appointment of trustees in his place, within three months from the time when they have been requested in writing by any person interested so to do, then and in any such case, any person interested may apply to the court for the appointment of trustees in the place of the Public Trustee, and the court may make such order as it thinks fit, and if thereby trustees of the land are appointed the same shall by virtue of this Act, vest (free as aforesaid) in the trustees upon the statutory trusts.

Vesting, in other cases, in Public Trustee.

This sub-para. will apply, *e.g.*, where there are more than four persons interested as absolute beneficial owners, or where one of two or more absolute owners has charged his share, or where some shares have been settled and others have not, or where different settlements affect different shares.

Distinction between severance of life interest and severance of settled land.

If A. and B. are tenants for life of the same land and arrange to take the rents and profits in shares, this does not create undivided shares in the "settled land," but only in the equitable life interest; the land remains settled land; but if the settlor limits land as to one moiety to A. for life with remainders over, and as to the other moiety to B. for life with remainders over, this creates undivided shares in the land, and a trust for sale of the entirety is imposed whether or not the remainders over happen to be the same in both cases.

"Free as aforesaid."

"Free as aforesaid," that is, free from incumbrances affecting undivided shares or not being legal mortgages of the entirety.

As to the position of the Public Trustee, *cf.* sub-para. (3), *sup.*, and notes thereto.

Appointment of new trustees.

Under this para. the new trustees appointed are trustees for sale to act in place of the Public Trustee; any application to the court should be made in the matter of this Act.

Protection of purchasers.

Purchasers (s. 205 (1) (xxi)) will not enquire whether incumbrancers of undivided shares have consented to the appointment of new trustees; but should be satisfied by statutory declaration or investigation of title as to the right of the appointors to make the appointment.

(5) The vesting in the Public Trustee of land by virtue of this Part of this Schedule shall not affect any directions previously given as to the payment of income or of interest on any mortgage money, but such instructions may, until he accepts the trust, continue to be acted on as if no such vesting had been effected.

Directions as to payment of income.

This sub-para. makes it clear, for the protection of the Public Trustee, that directions given before he accepts the trust and before 1926 for payment of income to or by a bank, or other person, are not affected; it enables the income to be dealt with pending the decision whether the Public Trustee is or is not to act. The beneficial interests are not affected by the "statutory trusts": s. 35, *sup.*

(6) The court or the Public Trustee may act on evidence given by affidavit or by statutory declaration as respects the undivided shares without investigating the title to the land.

Evidence of title to undivided shares.

This sub-para. is for the protection of the Public Trustee and to save costs on applications to the court.

(7) Where all the undivided shares in the land are vested in the same mortgagees for securing the same mortgage money and the rights of redemption affecting the land are the same as might have been subsisting if the entirety had been mortgaged by an owner before the undivided shares were created, the land shall, by virtue of this Act, vest in the mortgagees as joint tenants for a legal term of years absolute (in accordance with this Act) subject to cesser on redemption by the trustees for sale in whom the right of redemption is vested by this Act, and for the purposes of this Part of this Schedule the mortgage shall be deemed an incumbrance affecting the entirety.

Mortgagees of all undivided shares.

This sub-para. applies, *e.g.*, where all the owners of undivided shares have joined in a mortgage for their common benefit.

"Legal term of years absolute": s. 205 (1) (xxvii); and see Parts VII. and VIII. of this Sch. as to vesting in mortgagees.

The effect of the sub-para. is to make such a mortgage paramount to the trust for sale: see next sub-para.

(8) This Part of this Schedule does not (except where otherwise expressly provided) prejudice incumbrancers whose incumbrances affect the entirety of the land at the commencement of this Act, but (if the nature of the incumbrance admits) the land shall vest in them for legal terms of years absolute in accordance with this Act, but not so as to affect subsisting priorities.

Protection of legal incumbrancers.

This sub-para. preserves the rights of legal incumbrancers of the entirety. Legal mortgage terms will vest in them under Parts VII. and VIII. of this Sch. in all appropriate cases.

Equitable charges shifted.

"Except where otherwise expressly provided": only legal mortgages are paramount to the trust for sale. If a legal mortgage term is not created, the charge on the entirety, being an equitable charge, is shifted to the proceeds of sale, and effect will be given thereto under the statutory trusts: s. 35. This is in accordance with the principle in s. 2, under which an equitable charge is overreached by means of a trust for sale.

Land tax and tithe-rent-charge.

Land tax, tithe rentcharges, &c. mentioned in sub-para. (12) are legal incumbrances (s. 1 (2) (d)) affecting the entirety, hence remain paramount to the trust for sale.

Priorities.

Priorities are not affected by reason of second and subsequent mortgages being converted into legal mortgages by Pts. VII. and VIII.; *e.g.*, if a charge on a share had priority over a mortgage of the entirety, that priority would remain, though it is shifted to the proceeds of sale if title is made by the trustees for sale.

If the mortgagee sells, he must convey subject thereto: s. 104 (1), *sup.*; unless the chargee, after a transfer of the charge, has failed to register a land charge under L. C. A., 1925, s. 10, Class C. (iii), or arrangements are made for the discharge thereof.

(9) The trust for sale and powers of management vested in persons who hold the entirety of the land on trust for sale shall, save as hereinafter mentioned, not be exercisable without the consent of any incumbrancer, being of full age, affected whose incumbrance is divested by this Part of this Schedule, but a purchaser shall not be concerned to see or inquire whether any such consent has been given, nor, where the incumbrancer is not in possession, shall any such consent be required if, independently of this Part of this Schedule or any enactment replaced thereby the transaction would have been binding on him, had the same been effected by the mortgagor.

Shifted incumbrances protected as respects sale and management.

"Powers of management": s. 28, *sup.*; "save as hereinafter mentioned," *i.e.*, where the mortgagor has powers to grant leases under s. 99, *sup.*, or otherwise, without the consent of the incumbrancer.

Purchaser from trustees for sale not concerned.

But a purchaser, mortgagee or lessee from the trustees for sale is not concerned to see that the consent has been given.

(10) This Part of this Schedule does not apply to land in respect of which a subsisting contract for sale (whether made under an order in a partition action or by or on behalf of all the tenants in common or coparceners) is in force at the commencement of this Act if the contract is completed in due course (in which case title may be made in like manner as if this Act, and any enactment thereby replaced, had not been passed), nor to the land in respect of which a partition action is pending at such commencement if an order for a partition or sale is subsequently made in such action.

Saving as to land sold in partition action, &c.

If there is a subsisting contract for sale under an order in a partition action, the title will already have been investigated in the action, and the usual certificate in answer to inquiries will have been made; no difficulty should arise as respects parties, &c., or capacity to convey, for, if required, a vesting order or order appointing a person to convey may be made: T. A., 1925, ss. 47, 48.

If there is a subsisting contract for sale by or on behalf of all the co-owners, they or their personal representatives can carry out the contract. Subsisting contracts.

If a contract for partition is subsisting, the trustees for sale would have to give effect to it: s. 207, *sup.*

It is conceived that if the proceedings are instituted under the Part. As., 1868 and 1876, and the writ merely asks for a sale, this is a "partition action" within this sub-para.: see Part. A., 1876, s. 7; also next sub-para. "Partition action."

(11) The repeal of the enactments relating to partition shall operate without prejudice to any proceedings thereunder commenced before the commencement of this Act, and to the jurisdiction of the court to make any orders in reference thereto, and subject to the following provisions, namely:—

(i) In any such proceedings, and at any stage thereof, any person or persons interested individually or collectively in more than one half of the land to which the proceedings relate, may apply to the court for an order staying such proceedings;

(ii) The court may upon such application make an order staying the proceedings as regards the whole or any part, not being an undivided share, of the land;

(iii) As from the date of such order the said enactments shall cease to apply to the land affected by the order and the provisions of this Part of this Schedule shall apply thereto;

(iv) The court may by such order appoint trustees of the land and the same shall by virtue of this Act vest (free as aforesaid) in the trustees as joint tenants upon the statutory trusts;

(v) The court may order that the costs of the proceedings and of the application shall be raised by the trustees, by legal mortgage of the land or any part thereof, and paid either wholly or partially into court or to the trustees;

(vi) The court may act on such evidence as appears to be sufficient, without investigating the title to the land.

For the repeals of 31 Hen. 8, c. 1, and 32 Hen. 8, c. 32, see L. P. (Amend.) A., 1924, 10th Sch.; of the Part. As., 1868 and 1876: 7th Sch., *inf.* Saving as to repeal of Part. As. and power to vest in trustees.

This sub-para. enables the proceedings in a partition action to proceed in the usual way, or to be stayed, and the land vested in trustees for sale; the *ad valorem* judicature stamp duties on the order for sale are thus saved.

"Free as aforesaid," *i.e.*, from incumbrances affecting undivided shares.

"Legal mortgage": s. 205 (1) (xvi), *sup.*

"At any stage thereof."

Under (vi), *sup.*, the court may act before the master's certificate is made; in this case the *ad valorem* stamp duties on the certificate are also saved.

Costs.

The provision as to evidence is designed to save costs.

(12) In this Part of this Schedule "incumbrance" does not include land tax, tithe rentcharge, or any similar charge on the land not created by an instrument.

Incumbrance defined.

"Incumbrance": s. 205 (1) (vii); "instrument": *ib.* (viii).

The charges excepted by this sub-para. are all legal charges on the land: s. 1 (2) (d), *sup.*

2. Where undivided shares in land, created before the commencement of this Act, fall into possession after such commencement, and the land is not settled land when the shares fall into possession, the personal representatives (subject to their rights and powers for purposes of administration) or other estate owners in whom the entirety of the land is vested shall, by an assent or a conveyance, give effect to the foregoing provisions of this Part of this Schedule in like manner as if the shares had fallen into possession immediately before the commencement of this Act, and in the meantime the land shall be held on the statutory trusts.

Undivided shares falling into possession after 1925.

"Into possession": see note to para. 1, *sup.*

In the ordinary case of the termination of a life interest S. L. A., 1925, s. 36, will apply; this para. is only supplemental to that s. and is designed to cover any case not within that s. For instance, the land might be vested in a corporation in fee simple with a right of reverter (*e.g.*, on the dissolution of the corporation or the termination of a charitable trust not administered *cy-près*), and the persons interested might be entitled in undivided shares.

Material date.

"The land is not settled land when the shares fall into possession": it is impossible for the land to be "settled land" after the shares have fallen into possession, for a trust for sale is immediately imposed; if a tenant for life dies, the land was then settled, but becomes subject to a trust for sale immediately after his death; where the land was settled at the time the trust for sale took effect, then S. L. A., 1925, s. 36, applies: see Specimen No. 2, 6th Sch., *inf.*

Where S.L.A., 1925, s. 36, applies.

Undivided shares created after 1925.

As to undivided shares created after 1925, see s. 34, *sup.*

3. This Part of this Schedule shall not save as hereinafter mentioned apply to party structures and open spaces within the meaning of the next succeeding Part of this Schedule.

Saving of party structures and open spaces.

Party structures and open spaces are necessarily subject to rights of user in common; they are not suitable objects of an unqualified trust for sale, hence special treatment is required: Pt. V., *inf.*; also s. 38, *sup.* Legal easements can be exercised in common: s. 187; they are not held in undivided shares.

Part V.

Provisions as to Party Structures and Open Spaces.

1. Where, immediately before the commencement of this Act, a party wall or other party structure is held in undivided shares, the ownership thereof shall be deemed to be severed vertically as between the respective owners, and the owner of each part shall have such rights to support and of user over the rest of the structure as may be requisite for conferring rights corresponding to those subsisting at the commencement of this Act.

Party structures.

No trust for sale is imposed in this case; as to party structures created after 1925, see s. 38, *sup.*

Implied easements.

The rights to support and user conferred by this para. may vary with the particular circumstances of each case: *Jones* v. *Pritchard,* 1908, 1 Ch. 630, 635 (flues divided by plane of division).

Liability of adjoining owners.

Subject to the implied easements, the owner of each part of the building may deal with it in such manner as he thinks fit; he is not subject to any liability if, by reason of natural decay or other circumstances beyond his control, his part is converted into such a condition that the easements cannot be exercised: *ib.*, at p. 637.

Rights to repair.

Each party will be entitled to repair the other's part of the structure, so far as is reasonably necessary for the enjoyment of the easements: *ib.*, at p. 638.

As to the rights of building owners under the London Building A., 1894, see ss. 87—101; *Barry* v. *Minturn,* 1913, A. C. 584.

"Deemed to be severed vertically."

Vertical severance must be construed as applying to the median plane of the structure. If the walls are vertical, the line of severance will be vertical in the ordinary sense; but if the division (*e.g.*, a ceiling and floor) is itself horizontal, the line of severance must be taken through the ceiling and floor as if that were itself vertical.

Divisions of "land" authorised.

"Land" includes buildings or parts of buildings (whether the division is horizontal, vertical, or made in any other way), hence a flat or a set of chambers is land within the Act, and can be dealt with as a separate tenement, though it cannot be held in undivided shares. For instance, a trust or power to dispose of land includes power to dispose of part, whether the division is horizontal, vertical, or made in any other way: T. A., 1925, s. 12 (2).

2. Where, immediately before the commencement of this Act, an open space of land (with or without any building used in common for the purposes of any adjoining land) is held in undivided shares, in right whereof each owner has rights of access and user over the open space, the ownership thereof shall vest in the Public Trustee on the statutory trusts which shall be executed only with the leave of the court, and, subject to any order of the court to the contrary, each person who would have been a tenant in common shall, until the open space is conveyed to a purchaser, have rights of

access and user over the open space corresponding to those which would have subsisted if the tenancy in common had remained subsisting.

Open spaces, trust for sale.

The trust for sale is in this case made exercisable subject to the leave of the court. No special provision is made in regard to open spaces for user in common laid out after 1925, for no undivided share therein can be created; s. 34, *sup.*, would apply.

"Open space" is not defined; it is conceived that the term is not restricted, *e.g.*, to the meaning specially given thereto in the Metropolitan Open Spaces A., 1881, s. 1, as amended by Open Spaces A., 1887, s. 2 (1) and Sch., and Open Spaces A., 1890, s. 7; under those Acts the land must be laid out as a garden, or be used for purposes of recreation, or lie waste or unoccupied, and any building must not exceed one-twentieth of the area of the open space.

This para. will apply to open spaces like the London squares, where the lessees of adjoining houses have rights of access and user over the square.

Buildings "used in common."

The buildings "used in common" would, for instance, include bandstands, summer houses, tool houses, &c.

3. Any person interested may apply to the court for an order declaring the rights and interests under this Part of this Schedule, of the persons interested in any such party structure or open space, or generally may apply in relation to the provisions of this Part of this Schedule, and the court may make such order as it thinks fit.

Applications to the court as to party structures, &c.

"Court": s. 203 (3); the application is by summons: *ib.* (2).

Part VI.

Conversion of Tenancies by entireties into Joint Tenancies.

Every tenancy by entireties existing immediately before the commencement of this Act shall, but without prejudice to any beneficial interest, as from such commencement be converted into a joint tenancy.

Tenancy by entireties converted into joint tenancy.

As to tenancy by entireties, see Co. Litt. 187b, 310a; 2 Preston, Abstracts, 39; *Re Gue*, 1892, 61 L. J. Ch. 510; *Thornley* v. *T.*, 1893, 2 Ch. 229 (effect of divorce); and cases cited in note to s. 37, *sup.*

Implied trusts for sale.

If the husband and wife are the only persons entitled, they will hold the legal estate on trust for sale: s. 36, *sup.* If the property is limited to the husband, the wife and a third person as absolute owners, the legal estate will vest in all three upon trust for sale: Pt. IV., para. 1 (2), *sup.*; and as to the proceeds of sale, upon trust as to one moiety for the husband and wife as joint tenants, and as to the remaining moiety for the third person: see note to s. 37, *sup.* The common law right of the husband to the rents and profits of his wife's fee simple, during the joint lives, is not affected by this para.

Husband's rights where fee simple is not separate property.

PART VII.

CONVERSION OF EXISTING FREEHOLD MORTGAGES INTO MORTGAGES BY DEMISE.

1. All land, which immediately before the commencement of this Act, was vested in a first or only mortgagee for an estate in fee simple in possession, whether legal or equitable, shall, from and after the commencement of this Act, vest in the first or only mortgagee for a term of three thousand years from such commencement, without impeachment of waste, but subject to a provision for cesser corresponding to the right of redemption which, at such commencement, was subsisting with respect to the fee simple.

First mortgages of freeholds.

This para. converts existing first mortgages of the fee simple into legal term mortgages for 3,000 years from 1st January, 1926: *cf.* s. 85, *sup.*

"Whether legal or equitable."

The para. applies whether the mortgage is legal or equitable; but equitable mortgages not protected by deposit of documents and not registered as land charges do not obtain any benefit as against a purchaser in good faith without notice by being made legal: para. 6, *inf.*

Extent of Pt. VII.

This Part applies to mortgages of every description where any estate in fee simple is expressed to have been conveyed to the mortgagee; it is extended further by Pt. II., *sup.*, and L. P. A., 1922, 12th Sch.; but it does not apply to a mere equitable charge: see Pt. II., para. 6; also para. 7 (j), *sup.*

"Provision for cesser": *cf.* s. 85, *sup.*

As to the rights of the mortgagee on realisation: s. 87, *sup.*

Term mortgages made before 1926.

If the mortgage made before 1926 created or transferred a term, that term remains in the mortgagee.

Small Dwellings Acquisition A., 1899.

Mortgages of the fee simple created under the Small Dwellings Acquisition A., 1899, are converted into legal term mortgages; see also L. P. (Amend.) A., 1924, 9th Sch., para. 5, as to mortgages to be made after 1925.

2. All land, which immediately before the commencement of this Act, was vested in a second or subsequent mortgagee for an estate in fee simple in possession, whether legal or equitable, shall, from and after the commencement of this Act, vest in the second or subsequent mortgagee for a term one day longer than the term vested in the first or other mortgagee whose security ranks immediately before that of such second or subsequent mortgagee, without impeachment of waste, but subject to the term or terms vested in such first or other prior mortgagee and subject to a provision for cesser corresponding to the right of redemption which, at such

commencement, was subsisting with respect to the fee simple.

Second and subsequent mortgages of freeholds.

This para. converts existing second and subsequent mortgages of the fee simple into legal term mortgages. Each such mortgagee is entitled to a leasehold reversion on the term of the mortgagee having immediate priority to him: s. 149, *sup.*, and note thereto. See also note to last para.

"Whether legal or equitable."

In most cases the legal estate in 1925 will be vested in the first mortgagee, but a second or subsequent mortgagee, with notice of the first mortgage, may have acquired it. If, though later in date, he has acquired it without notice of the first mortgage, the title deeds having been accounted for, he may in fact be the first mortgagee. As to tacking: s. 94, *sup.*, and note thereto. At any rate, priorities are not affected: para. 7, *inf.*

Priorities.

3. The estate in fee simple which, immediately before the commencement of this Act, was vested in any such mortgagee shall, from and after such commencement, vest in the mortgagor or tenant for life, statutory owner, trustee for sale, personal representative, or other person of full age who, if all money owing on the security of the mortgage and all other mortgages or charges (if any) had been discharged at the commencement of this Act, would have been entitled to have the fee simple conveyed to him, but subject to any mortgage term created by this Part of this Schedule or otherwise and to the money secured by any such mortgage or charge.

Vesting of reversion on mortgage terms in mortgagor.

This para. vests the freehold reversion on the mortgage terms in the person entitled to the ultimate equity of redemption.

"Would have been entitled," *i.e.*, under the vesting provisions: Parts II.—VI. of this Sch., and S. L. A., 1925, 2nd Sch., para. 3 (infants).

"And all other mortgages or charges (if any) had been discharged."

If there is a mortgagee by deposit, or other chargee having merely the benefit of an agreement to execute a legal mortgage when called for, he would not obtain a mortgage term: Pt. II., para. 7 (j), *sup.*; though his charge remains enforceable against the mortgagor who acquires the fee simple.

4. If a sub-mortgage by conveyance of the fee simple is subsisting immediately before the commencement of this Act, the principal mortgagee shall take the principal term created by paragraphs 1 or 2 of this Part of this Schedule (as the case may require) and the sub-mortgagee shall take a derivative term less by one day than the term so created, without impeachment of waste, subject to a provision for cesser corresponding to the right of redemption subsisting under the sub-mortgage.

Sub-mortgagee's derivative term acquired.

This para. converts freehold sub-mortgages by conveyance of the fee simple into derivative legal term mortgages. As to the rights of the sub-mortgagee on realisation: s. 88 (5), *sup.*

When no term is acquired.

"By conveyance of the fee simple": if the sub-mortgagee has merely taken an assignment of the mortgage debt, subject to a new right of redemption, he

will not acquire a mortgage term, nor would a sub-mortgagee by deposit merely of the mortgage and title deeds.

5. This Part of this Schedule applies to land enfranchised by statute as well as to land which was freehold before the commencement of this Act, and (save where expressly excepted) whether or not the land is registered under the Land Registration Act, 1925, or the mortgage is made by way of trust for sale or otherwise.

Application to enfranchised land and registered land.

"Enfranchised by statute": L. P. A., 1922, Pt. V.; as to the vesting of such enfranchised land, see *ib.*, 12th Sch., para. 1 (f); under that Sch. a mortgagee entitled under a covenant to make a conditional surrender becomes entitled to a mortgage term, but he may be postponed to a mortgagee by surrender without notice of the covenant: *ib.*

"By way of trust for sale."

Thus all trust deeds to secure debentures or debenture stock are treated as mortgages, and the trustees will obtain a mortgage term.

"Save where expressly excepted," there must be right of redemption subsisting: para. 8, *inf.*

"Or otherwise."

This Part does not apply to a mere equitable charge, lien, mortgage by deposit, or agreement to create a mortgage: Pt. II., paras. 6 (a), 7 (j), *sup.*

Registered land.

A chargee registered before 1926 acquires a mortgage term: L. R. A., 1925, s. 27 (4).

6. A mortgage affecting a legal estate made before the commencement of this Act which is not protected, either by a deposit of documents of title relating to the legal estate or by registration as a land charge, shall not, as against a purchaser in good faith without notice thereof, obtain any benefit by reason of being converted into a legal mortgage by this Schedule, but shall, in favour of such purchaser, be deemed to remain an equitable interest.

This paragraph does not apply to mortgages or charges registered or protected under the Land Registration Act, 1925, or to mortgages or charges registered in a local deeds register.

Protection of purchasers against unregistered "puisne mortgages."

As to "puisne mortgages" made after 1925: s. 97, *sup.*

"Puisne mortgages" created before 1926 must be registered as land charges when transferred: L. C. A., 1925, s. 10, Class C. (i); and may be so registered at any time after 1925: *ib.*, sub-s. (7).

When a land charge should be registered.

For safety, all "puisne mortgages" (not affecting registered land or relating only to land in Middlesex or Yorkshire) should be registered as land charges on 1st January, 1926. Unless a mortgagee is satisfied that he has all the material deeds affecting the legal estate of the mortgagor, he should also register a land charge.

"Without notice thereof."

Notice when material as respects legal estates.

The registration of a land charge will give notice: s. 198, *sup.* Under this para. "notice" remains material in regard to mortgages made before 1926 though the mortgagee has a legal term; as to notice as respects further advances and tacking: s. 94, *sup.*

7. Nothing in this Part of this Schedule shall affect priorities or the right of any mortgagee to retain possession of documents, nor affect his title to or rights over any fixtures or chattels personal comprised in the mortgage.

Priorities not affected.

See also as to priority as respects further advances and tacking, s. 94, *sup.*

Possession of documents.

This para. removes the difficulty disclosed in 1 Davidson, 4th ed. 582, as to the right of a term mortgagee to documents; see further s. 13, *sup.*

Fixtures of mortgagees.

A mortgagee of the fee simple continues to take an absolute interest in the fixtures and chattels personal, subject to the subsisting right of redemption and other rights of the mortgagor under the mortgage; see as to fixtures in respect of legal mortgages, *Hobson* v. *Gorringe,* 1897, 1 Ch. 182; *Reynolds* v. *Ashby,* 1904, A. C. 466; and as respects equitable mortgages, *Re Allen,* 1907, 1 Ch. 575; *Re Morrison, &c.*, 1914, 1 Ch. 50; see also *Re Rogerstone, &c.*, 1919, 1 Ch. 110 (sale by receiver of fixtures separately); *Re Yates,* 1888, 38 Ch. D. 112 (trade machinery). As to the power of sale: s. 88 (4), *sup.*

8. This Part of this Schedule does not apply unless a right of redemption is subsisting immediately before the commencement of this Act.

Right of redemption must be subsisting.

If the right of redemption has been barred under the Limitation As., the mortgagee will retain his estate in fee simple, discharged from the right: s. 12, *sup.*

Part VIII.

Conversion of existing Leasehold Mortgages into Mortgages by subdemise.

1. All leasehold land, which immediately before the commencement of this Act, was vested in a first or only mortgagee by way of assignment of a term of years absolute shall, from and after the commencement of this Act, vest in the first or only mortgagee for a term equal to the term assigned by the mortgage, less the last ten days thereof, but subject to a provision for cesser corresponding to the right of redemption which at such commencement was subsisting with respect to the term assigned.

First mortgages of leaseholds by assignment.

This para. converts existing first mortgages of leaseholds by assignment into derivative term mortgages: *cf.* Pt. VII., para. 1, *sup.*, and note thereto. If the lessee, before assigning his term in the mortgage, had created sub-terms, say, in each case, one day less than the head term, nevertheless the new mortgage term will, though shorter, be the reversion expectant on the sub-terms: s. 149 (5), *sup.*

A mortgage by sub-demise is not affected. All the terms will be legal terms: ss. 149 (5), 205 (1) (xxvii).

"Provision for cesser": *cf.* s. 86, *sup.*

Small Dwellings Acquisition A., 1899.

Under s. 2 of the Small Dwellings Acquisition A., 1899, mortgages had to be made by assignment; these are all converted into mortgages by sub-demise; and see L. P. (Amend.) A., 1924, 9th Sch., para. 5, under which these mortgages are to be made by charge by way of legal mortgage or by demise or sub-demise.

2. All leasehold land, which immediately before the commencement of this Act, was vested in a second or subsequent mortgagee by way of assignment of a term of years absolute (whether legal or equitable) shall, from and after the commencement of this Act, vest in the second or subsequent mortgagee for a term one day longer than the term vested in the first or other mortgagee whose security ranks immediately before that of such second or subsequent mortgagee if the length of the last-mentioned term permits, and in any case for a term less by one day at least than the term assigned by the mortgage, but subject to the term or terms vested in such first or other prior mortgagee, and subject to a provision for cesser corresponding to the right of redemption which, at the commencement of this Act, was subsisting with respect to the term assigned by the mortgage.

Second and subsequent mortgages of leaseholds.

This para. converts existing second and subsequent mortgages by assignment of leaseholds into legal sub-term mortgages. Each mortgagee is entitled to a leasehold reversion on the term of the mortgagee having priority to him; it is the correct practice to give a term to each subsequent mortgagee which is longer than the term vested in the mortgagee immediately above him, but this is not essential: s. 149 (5), *sup.*, and note thereto.

Compare notes to Pt. VII., para. 2.

3. The term of years absolute which was assigned by any such mortgage shall, from and after the commencement of this Act, vest in the mortgagor or tenant for life, statutory owner, trustee for sale, personal representative, or other person of full age who, if all the money owing on the security of the mortgage and all other mortgages or charges, if any, had been discharged at the commencement of this Act, would have been entitled to have the term assigned or surrendered to him, but subject to any derivative mortgage term created by this Part of this Schedule or otherwise and to the money secured by any such mortgage or charge.

Vesting of head term in mortgagor, subject to any mortgage terms.

Compare notes to Pt. VII., para. 3, *sup.*

"Created by this Part of this Schedule or otherwise": the term might have been created by a mortgage made before 1926.

4. If a sub-mortgage by assignment of a term is subsisting immediately before the commencement of this Act, the principal mortgagee shall take the principal derivative term created by paragraphs 1 or 2 of this Part of this Schedule or the derivative term created by his

mortgage (as the case may require), and the sub-mortgagee shall take a derivative term less by one day than the term so vested in the principal mortgagee, subject to a provision for cesser corresponding to the right of redemption subsisting under the sub-mortgage.

Sub-mortgagee's derivative legal terms.

This para. converts sub-mortgages by assignment of a term into derivative legal term mortgages: *cf.* Pt. VII., para. 4, and notes thereto. As to the rights of the sub-mortgagee on realisation: s. 89 (5), *sup.*

5. A mortgage affecting a legal estate made before the commencement of this Act which is not protected, either by a deposit of documents of title relating to the legal estate or by registration as a land charge shall not, as against a purchaser in good faith without notice thereof, obtain any benefit by reason of being converted into a legal mortgage by this Schedule, but shall, in favour of such purchaser, be deemed to remain an equitable interest.

This paragraph does not apply to mortgages or charges registered or protected under the Land Registration Act, 1925, or to mortgages or charges registered in a local deeds register.

"Puisne mortgages."

This para. follows Pt. VII., para. 6 (see notes thereto), and is re-enacted to make it clear that the same principles apply to leasehold mortgages.

6. This Part of this Schedule applies to perpetually renewable leaseholds, and to leaseholds for lives, which are by statute converted into long terms, with the following variations, namely:—

(a) The term to be taken by a first or only mortgagee shall be ten days less than the term created by such statute:

(b) The term to be taken by a second or subsequent mortgagee shall be one day longer than the term vested in the first or other mortgagee whose security ranks immediately before that of the second or subsequent mortgagee, if the length of the last-mentioned term permits, and in any case for a term less by one day at least than the term created by such statute:

(c) The term created by such statute shall, from and after the commencement of this Act, vest in the mortgagor or tenant for life, statutory owner, trustee for sale, personal representative, or other

person of full age, who if all the money owing on the security of the mortgage and all other mortgages or charges, if any, had been discharged at the commencement of this Act, would have been entitled to have the term assigned or surrendered to him, but subject to any derivative mortgage term created by this Part of this Schedule or otherwise and to the money secured by any such mortgage or charge.

Application to perpetually renewable leaseholds and leaseholds for lives.

Perpetually renewable terms are converted into long terms of 2,000 years determinable by notice: L. P. A., 1922, Pt. VII. and 15th Sch., as amended. Leaseholds for lives are converted into terms of ninety years determinable by notice: s. 149 (6), *sup.* In both cases the terms so acquired are "legal estates": s. 205 (1) (xxvii).

Compare paras. 1—3, *sup.*, and notes thereto.

7. This Part of this Schedule applies (save where expressly excepted) whether or not the leasehold land is registered under the Land Registration Act, 1925, or the mortgage is made by way of trust for sale or otherwise.

Application to registered land, &c.

This follows Pt. VII., para. 5, *sup.*: see notes thereto.

8. Nothing in this Part of this Schedule shall affect priorities or the right of any mortgagee to retain possession of documents, nor affect his title to or rights over any fixtures or chattels personal comprised in the mortgage, but this Part of this Schedule does not apply unless a right of redemption is subsisting at the commencement of this Act.

Priorities, &c.

See notes to paras. 7 and 8 of Part VII. of this Sch.

SECOND SCHEDULE.

Sections 76 and 77.

Implied Covenants.

Part I.

Covenant implied in a Conveyance for Valuable Consideration, other than a Mortgage, by a Person who Conveys and is expressed to Convey as Beneficial Owner.

That, notwithstanding anything by the person who so conveys or any one through whom he derives title otherwise than by purchase for value, made, done, exe-

cuted, or omitted, or knowingly suffered, the person who so conveys, has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject-matter expressed to be conveyed, subject as, if so expressed, and in the manner in which, it is expressed to be conveyed, and that, notwithstanding anything as aforesaid, that subject-matter shall remain to and be quietly entered upon, received, and held, occupied, enjoyed, and taken, by the person to whom the conveyance is expressed to be made, and any person deriving title under him, and the benefit thereof shall be received and taken accordingly, without any lawful interruption or disturbance by the person who so conveys or any person conveying by his direction, or rightfully claiming or to claim by, through, under, or in trust for the person who so conveys, or any person conveying by his direction, or by, through, or under any one (not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made), through whom the person who so conveys derives title, otherwise than by purchase for value:

And that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all such estates, incumbrances, claims, and demands, other than those subject to which the conveyance is expressly made, as, either before or after the date of the conveyance, have been or shall be made, occasioned, or suffered by that person or by any person conveying by his direction, or by any person rightfully claiming by, through, under, or in trust for the person who so conveys, or by, through, or under any person conveying by his direction, by, through, or under any one through whom the person who so conveys derives title, otherwise than by purchase for value:

And further, that the person who so conveys, and any person conveying by his direction, and every other person having or rightfully claiming any estate or interest in the subject-matter of conveyance, other than an estate or interest subject whereto the conveyance is expressly made, by, through, under, or in trust for the person who so conveys, or by, through, or under any person conveying by his direction, or by, through, or under any one through whom the person who so conveys derives title, otherwise than by purchase for value, will,

from time to time and at all times after the date of the conveyance, on the request and at the cost of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of the conveyance to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by him or them or any of them shall be reasonably required.

In the above covenant a purchase for value shall not be deemed to include a conveyance in consideration of marriage.

There is nothing new in the above form of covenants.

See note to s. 76, *sup.*

Right to convey: quiet enjoyment; freedom from incumbrance; further assurance.

The expression "purchase for value" is not to include a conveyance in consideration of marriage for the reason that the covenant E. in Pt. V., *inf.*, by a settlor is a limited covenant.

"Purchase for value."

A voluntary conveyance (if it be not a settlement to which the covenant in Pt. V. is made applicable) still requires either an express covenant, if any is intended to be given, or an express reference to the Part of this Sch. which is to be incorporated; but in most cases no covenant would be given.

Covenants in voluntary conveyance.

If A. takes by conveyance on a sale by B., who takes under a settlement, voluntary or otherwise, made by C., then B. derives title "otherwise than by purchase for value" through C., and in the conveyance by B. to A. the implied covenant by B. would extend to the acts of C. But A. does not derive title "otherwise than by purchase for value" through B., and consequently not through C., and on a conveyance by A. his implied covenant would extend only to his own acts.

How far back covenant extends.

The words of qualification, "notwithstanding anything," &c., control all four branches of the covenant: *David* v. *Sabin*, 1893, 1 Ch. 523.

Qualification of covenant.

Semble, a vendor who takes all reasonable care is not liable for not getting in an incumbrance of which he knows nothing: *David* v. *Sabin*, *sup.*, at pp. 529, 534. Under s. 42, *sup.*, a vendor must make title in the best way to defeat incumbrances, but if the purchaser does not insist on this before completion, he will be left to rely on the covenants for title.

"Omitted."

The failure to eject a trespasser who is gradually acquiring a title by possession is an omission: *Eastwood* v. *Ashton*, 1915, A. C. 900.

Trespasser.

"Knowingly suffered": see *S. C.*, 1913, 2 Ch. 39, 54; 1915, A. C. 913.

"Knowingly suffered."

In *David* v. *Sabin*, *sup.*, A. granted a lease to B., who sub-demised by way of mortgage to C. B. then surrendered to A., concealing the existence of the mortgage, and A. then sold the fee simple to B., under whom the plaintiff claimed, conveying as beneficial owner. The mortgage was an incumbrance made by a person rightfully claiming under A. against which A. was liable to indemnify the plaintiff: *S. C.*

Persons claiming under the vendor.

C. not having the title deeds would, after 1925, register his mortgage as a land charge; this would prevent concealment.

Puisne mortgages.

Mere notice to the purchaser, by mention in the conveyance or otherwise, of defects of title is not enough to absolve the vendor from liability under the covenants for title: see *Page* v. *Midland Rly. Co.*, 1894, 1 Ch. 11 (overruling *Hunt* v. *White*, 1868, 37 L. J. Ch. 326); *May* v. *Platt*, 1900, 1 Ch. 616;

Notice of defects.

Rectification. *G. W. R. Co.* v. *Fisher,* 1905, 1 Ch. 316; 53 Sol. J. 174, 195; where, however, a conveyance was made pursuant to a contract which stated a defect, and that the vendor should not be required to remedy it, but the conveyance contained no reference to this, and the vendor conveyed as beneficial owner; *held,* in an action against the vendor on his implied covenants for title, that he was entitled to have the conveyance rectified by the insertion of a proviso limiting his liability under such covenants: *Stait* v. *Fenner,* 1912, 2 Ch. 504; and consider

Release of power. *Slack* v. *Hancock,* 1912, 107 L. T. 14. There is a strong presumption that covenants for title are only ancillary to an assurance, and are not intended to enlarge its operation, hence if property is in terms assured subject to a power vested in the assuror, ordinary covenants for title will not operate as a release of that power: *Nottidge* v. *Dering,* 1910, 1 Ch. 297, 306, 307; and see *Re Greenwood,* 1892, W. N. 20.

Local land charges. The above covenant does not apply to money due for paving expenses, where it is only recoverable from the owner personally: *Egg* v. *Blayney,* 1888, 21 Q. B. D. 107 (Metropolis Management Amend. A., 1862); but does apply where it is a charge upon the land: *Re Bettesworth & Richer,* 1888, 37 Ch. D. 535 (Public Health A., 1875); *Stock* v. *Meakin,* 1900, 1 Ch. 683 (Private Street Works A., 1892); *Re Allen & Driscoll,* 1904, 2 Ch. 226 (Public Health A., 1875). The charge under the last-mentioned Acts dates from the completion of the works: *S. CC.* A local land charge created after 1925 (or if created before 1926, then within one year after) must be registered, otherwise a purchaser will take free therefrom: L. C. A., 1925, s. 15.

Damages for breach. As to the distinction between the case of damage arising from the breach of a covenant for quiet enjoyment and that arising from breach of a covenant for title, see Dart, 7th ed. 803; 46 Sol. J. 279; 49 *ib.* 346; and as to the measure of damages in the last-mentioned case, see *Turner* v. *Moon,* 1901, 2 Ch. 825; *G. W. R. Co.* v. *Fisher, sup.; Eastwood* v. *Ashton,* 1913, 2 Ch. 39; and compare *Sutton* v. *Baillie,* 1891, 65 L. T. 528.

Limitation As. As to the date from which the Limitation As. will begin to run in the covenantor's favour, see *Turner* v. *Moon, sup.,* at p. 828.

Part II.

Further Covenant implied in a Conveyance of Leasehold Property for valuable Consideration, other than a Mortgage, by a Person who Conveys and is expressed to Convey as Beneficial Owner.

That, notwithstanding anything by the person who so conveys, or any one through whom he derives title, otherwise than by purchase for value, made, done, executed, or omitted, or knowingly suffered, the lease or grant creating the term or estate for which the land is conveyed is, at the time of conveyance, a good, valid, and effectual lease or grant of the property conveyed, and is in full force, unforfeited, unsurrendered, and has in nowise become void or voidable, and that, notwithstanding anything as aforesaid, all the rents reserved by, and all the covenants, conditions, and agreements con-

tained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, have been paid, observed, and performed up to the time of conveyance.

In the above covenant a purchase for value shall not be deemed to include a conveyance in consideration of marriage.

On assignment of leaseholds implied covenant by purchaser.

The Act also provides for a covenant for indemnity against rent and covenants by a purchaser on the assignment of the entirety of land comprised in a lease, or of leaseholds at rents apportioned with or without the consent of the lessor: s. 77 (1) and Parts IX., X. of this Sch.; see also L. R. A., 1925, s. 24.

On surrender of leaseholds, covenant to be varied.

Semble, in a surrender of a lease there should be an exclusion, under s. 76 (7), of the covenant implied under s. 76 (1), clause (B), which assumes the existence of a landlord standing aloof as a third party; and see *David* v. *Sabin*, 1893, 1 Ch. 523.

Part III.

Covenant implied in a Conveyance by way of Mortgage by a Person who Conveys and is expressed to Convey as Beneficial Owner.

That the person who so conveys, has, with the concurrence of every other person, if any, conveying by his direction, full power to convey the subject-matter expressed to be conveyed by him, subject as, if so expressed, and in the manner in which it is expressed to be conveyed:

And also that, if default is made in payment of the money intended to be secured by the conveyance, or any interest thereon, or any part of that money or interest, contrary to any provision in the conveyance, it shall be lawful for the person to whom the conveyance is expressed to be made, and the persons deriving title under him, to enter into and upon, or receive, and thenceforth quietly hold, occupy, and enjoy or take and have, the subject-matter expressed to be conveyed, or any part thereof, without any lawful interruption or disturbance by the person who so conveys, or any person conveying by his direction, or any other person (not being a person claiming in respect of an estate or interest subject whereto the conveyance is expressly made):

And that, freed and discharged from, or otherwise by the person who so conveys sufficiently indemnified against, all estates, incumbrances, claims, and demands

whatever, other than those subject whereto the conveyance is expressly made:

And further, that the person who so conveys and every person conveying by his direction, and every person deriving title under any of them, and every other person having or rightfully claiming any estate or interest in the subject-matter of conveyance, or any part thereof, other than an estate or interest subject whereto the conveyance is expressly made, will from time to time and at all times, on the request of any person to whom the conveyance is expressed to be made, or of any person deriving title under him, but, as long as any right of redemption exists under the conveyance, at the cost of the person so conveying, or of those deriving title under him, and afterwards at the cost of the person making the request, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of conveyance and every part thereof to the person to whom the conveyance is made, and to those deriving title under him, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by him or them or any of them shall be reasonably required.

The above covenant in the case of a charge shall have effect as if for references to "conveys," "conveyed" and "conveyance" there were substituted respectively references to "charges," "charged" and "charge."

Covenants in a mortgage by beneficial owner.

The words in italics are new and do not affect the original construction: C. A., 1881, s. 2 (v). (vi); they, however, make it clearer.

Bill of sale.

This covenant inserted in a bill of sale makes it void: *Ex p. Stanford*, 1886. 17 Q. B. D. 259.

Right only contractual.

This Sch. does not confer any actual right of entry on the mortgagee, but only a right of action for damages: *Northern Banking Co.* v. *Devlin*, 1924, 1 I. R. 90.

Part IV.

Covenant implied in a Conveyance by way of Mortgage of Freehold Property subject to a Rent or of Leasehold Property by a Person who Conveys and is expressed to Convey as Beneficial Owner.

That the lease or grant creating the term or estate for which the land is held is, at the time of conveyance, a good, valid, and effectual lease or grant of the land conveyed and is in full force, unforfeited, and unsur-

rendered and has in nowise become void or voidable, and that all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, have been paid, observed, and performed up to the time of conveyance:

And also that the person so conveying, or the persons deriving title under him, will at all times, as long as any money remains owing on the security of the conveyance, pay, observe, and perform, or cause to be paid, observed, and performed all the rents reserved by, and all the covenants, conditions, and agreements contained in, the lease or grant, and on the part of the lessee or grantee and the persons deriving title under him to be paid, observed, and performed, and will keep the person to whom the conveyance is made, and those deriving title under him, indemnified against all actions, proceedings, costs, charges, damages, claims and demands, if any, to be incurred or sustained by him or them by reason of the non-payment of such rent or the non-observance or non-performance of such covenants, conditions, and agreements, or any of them.

The above covenant in the case of a charge shall have effect as if for references to "conveys," "conveyed" and "conveyance" there were substituted respectively references to "charges," "charged" and "charge."

Mortgage subject to a rent by a beneficial owner

The words in the heading, "freehold property subject to a rent or of," extend the operation of the covenant.

The words in italics are new and are added to make the construction clearer.

Part V.

Covenant implied in a Conveyance by way of Settlement, by a Person who Conveys and is expressed to Convey as Settlor.

That the person so conveying, and every person deriving title under him by deed or act or operation of law in his lifetime subsequent to that conveyance, or by testamentary disposition or devolution in law, on his death, will, from time to time, and at all times, after the date of that conveyance, at the request and cost of any person deriving title thereunder, execute and do all such lawful assurances and things for further or more

perfectly assuring the subject-matter of the conveyance to the persons to whom the conveyance is made and those deriving title under them, as by them or any of them shall be reasonably required, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made.

Covenants in settlements.

It is conceived that "a conveyance by way of settlement" need not, to come within this Sch., contain limitations by way of succession; it is enough if it disposes of property for the benefit of some other person or some corporation: compare *Re Player*, 1885, 15 Q. B. D. 682; *Re Vansittart*, 1893, 1 Q. B. 181; *Re Plummer*, 1900, 2 Q. B. 790, decisions on s. 47 of the Bkcy. A., 1883.

Covenants in settlements, old practices as to.

The old practice in settlements was for the settlor to give the ordinary vendor's covenants for title. This can still be done, where the settlement is "a conveyance for valuable consideration," by making him convey as beneficial owner instead of as settlor, and so incorporating covenant in the 1st Part of this Sch. The old practice is inconvenient. If a charge be suppressed or accidentally overlooked, the trustees on discovering it become bound to sue the settlor. The amount to be recovered might be such as to leave him penniless and make proceedings in bankruptcy necessary. This cannot be for the benefit of the wife or family, and is an obligation which should not be imposed on trustees. There should be either no covenant for title, or at most the limited covenant in this Part of the 2nd Sch. with the restriction hereinafter mentioned.

Effect of covenant.

This covenant binds the settlor purporting to convey the fee simple, to bar an estate tail (see *Davis* v. *Tollemache*, 1856, 2 Jur. N. S. 1181, 1185; *Bankes* v. *Small*, 1887, 36 Ch. D. 716), to execute a valid appointment under a power, or do any other like act for confirming the settlement. In the case of a voluntary settlement it does not throw on the settlor any obligation to discharge incumbrances paramount to his own title: *Ker* v. *K.*, 1869, 4 Ir. R. Eq. 15; and see *West* v. *Williams*, 1899, 1 Ch. 132, 147; but it is otherwise in the case of a conveyance for value: *Re Jones*, 1893, 2 Ch. 461, 474; hence in a marriage settlement a proviso restricting the liability of the covenantor may sometimes be required in the form contained in K. & E., 11th ed., vol. ii., p. 669. But an assignee, whether voluntary or for value, is not liable to contribute to payment of incumbrances created by the assignor himself, and for which the assignor is personally liable, even if there are no covenants for title: *Re Darby*, 1907, 2 Ch. 465. See also K. & E., 11th ed., vol. ii., p. 589.

Further assurance.

A covenant for further assurance contained in a settlement of part of a reversionary interest does not bind the settlor to indemnify the settled fund against legacy duty: *Re Repington*, 1904, 1 Ch. 811. And as to this covenant generally, see Norton on Deeds, 563 *et seq.*

Part VI.

Covenant implied in any Conveyance, by every Person who Conveys and is expressed to Convey as Trustee or Mortgagee, or as Personal Representative of a Deceased Person, or as Committee of a Lunatic or as a Receiver of a Defective or under an Order of the Court.

That the person so conveying has not executed or done, or knowingly suffered, or been party or privy to,

any deed or thing, whereby or by means whereof the subject-matter of the conveyance, or any part thereof, is or may be impeached, charged, affected, or incumbered in title, estate, or otherwise, or whereby or by means whereof the person who so conveys is in anywise hindered from conveying the subject-matter of the conveyance, or any part thereof, in the manner in which it is expressed to be conveyed.

The foregoing covenant may be implied in an assent in like manner as in a conveyance by deed.

Covenants by personal representatives, trustees, &c.

The words in italics are new; many assents in writing will be given by personal representatives under Ad. of E. A., 1925, s. 36, and S. L. A., 1925, s. 8 (1).

Fiduciary vendors.

When a vendor is selling in a fiduciary capacity he should expressly stipulate that the purchaser shall not be entitled to any covenant other than that implied by his being expressed to convey in the appropriate capacity under this covenant, or to any undertaking under s. 64 (9), *sup.*, as to the safe custody of deeds retained by him, as is done in the General Conditions of 1925.

Covenant by outgoing trustee.

On a change of trustees the covenant against incumbrances of an outgoing trustee is now of less importance than it was, any wrongful incumbrance being a breach of trust for which there is a remedy independently of the covenant. Before the Ad. of E. A., 1869, the covenant was useful as making the breach of trust a specialty debt having a priority: see *Holland* v. *H.*, 1869, 4 Ch. 449; nor is it quite useless for that purpose even now: see note to s. 80, *sup.* It also, in regard to T. A., 1888, s. 8, leaves more time for an action to be brought against the trustee.

Example of breach.

For an example of a breach of this covenant, see *Wise* v. *Whitburn*, 1924, 1 Ch. 460 (an assent by executors to property specifically bequeathed which they afterwards purported to sell as executors).

"Party or privy."

"Party or privy": see, on the force of these words, *Hobson* v. *Middleton*, 1825, 6 B. & C. 295; *Clifford* v. *Hoare*, 1874, L. R. 9 C. P. 362; Sugden, V. & P., 14th ed. 603, 604.

"Privy."

The word "privy" does not mean "having knowledge" (which would make the covenant to a great extent an absolute covenant for title), but means participation in some act so as to be bound thereby: see per Tindal, C.J., *Woodhouse* v. *Jenkins*, 1832, 9 Bing. 441; *Thorne* v. *Heard*, 1894, 1 Ch. 606; Century Dict. tit. "Privity."

Part VII.

Covenant implied in a Conveyance for Valuable Consideration, other than a Mortgage, of the Entirety of Land affected by a Rentcharge.

[Covenant by grantees.]

That the grantees or the persons deriving title under them will at all times, from the date of the conveyance or other date therein stated, duly pay the said rentcharge and observe and perform all the covenants, agreements and conditions contained in the deed or other document creating the rentcharge, and thenceforth on the part of the owner of the land to be observed and performed:

And also will at all times, from the date aforesaid, save harmless and keep indemnified the conveying parties and their respective estates and effects, from and against all proceedings, costs, claims and expenses on account of any omission to pay the said rentcharge or any part thereof, or any breach of any of the said covenants, agreements and conditions.

Conveyance of entirety of land affected by the original or a legally apportioned rent.

See note to s. 77 (1) (A), *sup.*, and General Conditions of 1925, cl. 27.

This Part of this Sch. gives effect to the usual covenant inserted in conveyances before 1926: 1 Prid., 21st ed. 594; where either the entire land affected by the original rentcharge is conveyed or the land affected by a legally apportioned rentcharge is conveyed, the above covenant will be implied, and in the latter case as if the apportioned rent were the rent referred to and the document creating the rentcharge related solely to that land: s. 77 (1) (A).

Registered land.

In the case of registered land the disposition will refer to the fact that the covenant is implied.

Part VIII.

Covenants implied in a Conveyance for Valuable Consideration, other than a Mortgage, of Part of Land affected by a Rentcharge, subject to a Part (not legally apportioned) of that Rentcharge.

[Covenants by grantees.]

(i) That the grantees, or the persons deriving title under them, will at all times, from the date of the conveyance or other date therein stated, pay the apportioned rent and observe and perform all the covenants (other than the covenant to pay the entire rent) and conditions contained in the deed or other document creating the rentcharge, so far as the same relate to the land conveyed:

And also will at all times, from the date aforesaid, save harmless and keep indemnified the conveying parties and their respective estates and effects, from and against all proceedings, costs, claims and expenses on account of any omission to pay the said apportioned rent, or any breach of any of the said covenants and conditions, so far as the same relate as aforesaid.

Conveyance of part of land affected by an equitably apportioned part of the rent.

See note to s. 77 (1) (B) and General Conditions of 1925, cl. 27.

Variation where the whole rent is charged on the land conveyed.

If the land is by the conveyance charged with the entire rent, then the above covenant will, under s. 77 (2), have effect as if the entire rent were mentioned in the covenant instead of the "apportioned rent."

The words "other than the covenant to pay the entire rent" will then be inapplicable.

(ii) That the conveying parties, or the persons deriving title under them, will at all times, from the date of the conveyance or other date therein stated, pay the balance of the rentcharge (after deducting the apportioned rent aforesaid, and any other rents similarly apportioned in respect of land not retained), and observe and perform all the covenants, other than the covenant to pay the entire rent, and conditions contained in the deed or other document creating the rentcharge, so far as the same relate to the land not included in the conveyance and remaining vested in the covenantors: [Covenants by conveying parties.]

And also will at all times, from the date aforesaid, save harmless and keep indemnified the grantees and their estates and effects, from and against all proceedings, costs, claims and expenses on account of any omission to pay the aforesaid balance of the rentcharge, or any breach of any of the said covenants and conditions so far as they relate as aforesaid.

This Part of this Sch. gives the effect of the usual covenants inserted in conveyances made before 1926 of part of land affected by a rentcharge, subject to a part not legally apportioned of that rentcharge: 1 Prid., 21st ed. 595, 597. See also General Conditions of 1925, cl. 27. Conveyances of part of land affected.

If the land is by the conveyance exonerated from the entire rent, then the covenant (ii) takes effect as if the entire rent were the balance of the rent, and as if the words "other than the covenant to pay the entire rent" had been omitted: s. 77 (2), *sup.* Variation where the land conveyed is exonerated.

The covenants by the conveying parties will only be implied if they convey "as beneficial owners," unless the covenants are incorporated by reference under s. 77 (4). Covenants by conveying parties.

Part IX.

Covenant in a Conveyance for valuable Consideration, other than a Mortgage, of the Entirety of the Land comprised in a Lease for the Residue of the Term or Interest created by the Lease.

That the assignees, or the persons deriving title under them, will at all times, from the date of the conveyance or other date therein stated, duly pay all rent becoming due under the lease, creating the term or interest for which the land is conveyed, and observe and perform all the covenants, agreements and conditions therein contained and thenceforth on the part of the lessees to be observed and performed: [Covenants by assignees.]

And also will at all times, from the date aforesaid, save harmless and keep indemnified the conveying parties and their estates and effects, from and against all proceedings, costs, claims and expenses on account of any omission to pay the said rent or any breach of any of the said covenants, agreements and conditions.

See note to s. 77 (1) (c); General Conditions of 1925, cl. 27.

Assignment of entire land in a lease.

This Part of this Sch. gives the effect of the usual covenants inserted in assignments before 1926: 1 Prid., 21st ed. 332.

Variation where the rent has been legally apportioned.

The same covenant is implied in an assignment of part of the land comprised in a lease at a legally apportioned rent as if the rent so apportioned were the original rent and the lease related solely to that land: s. 77 (1) (c).

Part X.

Covenants implied in a Conveyance for Valuable Consideration, other than a Mortgage, of Part of the Land comprised in a Lease, for the Residue of the Term or Interest created by the Lease, subject to a Part (not legally apportioned) of that Rent.

[Covenants by assignees.]

(i) That the assignees, or the persons deriving title under them, will at all times, from the date of the conveyance or other date therein stated, pay the apportioned rent and observe and perform all the covenants, other than the covenant to pay the entire rent, agreements and conditions contained in the lease creating the term or interest for which the land is conveyed, and thenceforth on the part of the lessees to be observed and performed, so far as the same relate to the land conveyed:

And also will at all times from the date aforesaid save harmless and keep indemnified, the conveying parties and their respective estates and effects, from and against all proceedings, costs, claims and expenses on account of any omission to pay the said apportioned rent or any breach of any of the said covenants, agreements and conditions so far as the same relate as aforesaid.

Conveyance of part of land in a lease.

See note to s. 77 (1) (d) and General Conditions of 1925, cl. 27.

Variation where that part is subjected to the entire rent.

If the term in the part of the land assigned is charged with the entire rent, then the above covenant will, under s. 77 (2), have effect as if the entire rent were mentioned therein in place of the apportioned rent; thus the words "other than the covenant to pay the entire rent" become inapplicable.

[Covenants by conveying parties.]

(ii) That the conveying parties, or the persons deriving title under them, will at all times, from the date of

the conveyance, or other date therein stated, pay the balance of the rent (after deducting the apportioned rent aforesaid and any other rents similarly apportioned in respect of land not retained) and observe and perform all the covenants, other than the covenant to pay the entire rent, agreements and conditions contained in the lease and on the part of the lessees to be observed and performed so far as the same relate to the land demised (other than the land comprised in the conveyance) and remaining vested in the covenantors:

And also will at all times, from the date aforesaid, save harmless and keep indemnified, the assignees and their estates and effects, from and against all proceedings, costs, claims and expenses on account of any omission to pay the aforesaid balance of the rent or any breach of any of the said covenants, agreements and conditions so far as they relate as aforesaid.

Conveyances of part of land in leases.

This Part of this Sch. gives the effect of the usual covenants inserted in assignments before 1926: 1 Prid., 21st ed. 335.

Variation where the land assigned is exonerated from the rent.

If the land is by the conveyance exonerated from the entire rent, then covenant (ii), *sup.*, will, under s. 77 (2), have effect as if the entire rent were the balance of the rent, and the words "other than the covenant to pay the entire rent" were omitted.

Covenants by conveying parties.

The covenants by the conveying parties will only be implied if they convey "as beneficial owners," unless the covenants are incorporated by reference under s. 77 (4).

THIRD SCHEDULE.

Sections 114 and 115.

Forms of Transfer and Discharge of Mortgages.

Form No. 1.

Form of Transfer of Mortgage (*a*).

This Transfer of Mortgage made the day of 19 , between *M.* of [&c.] of the one part and *T.* of [&c.] of the other part, supplemental to a Mortgage dated [&c.], and made between [&c.], and to a Further Charge dated [&c.], and made between [&c.]

(*a*) As to the effect of this form of transfer of mortgage, which is new, see s. 114, *sup.*, and note thereto. It follows the principles adopted in C. A., 1881, s. 27. As to describing a deed at its commencement so as to show what the transaction will be: s. 57, *sup.*

affecting &c. (*here state short particulars of the mortgaged property*).

WITNESSETH that in consideration of the sums of £ and £ (for interest) now paid by *T.* to *M.*, being the respective amounts of the mortgage money and interest owing in respect of the said mortgage and further charge (the receipt of which sums *M.* hereby acknowledges) *M.*, as mortgagee, hereby conveys and transfers to *T.* the benefit of the said mortgage and further charge.

In witness, &c.

Section 115.

FORM No. 2.

FORM OF RECEIPT ON DISCHARGE OF A MORTGAGE (*b*).

I, *A.B.*, of [&c.] hereby acknowledge that I have this day of 19 , received the sum of £ representing the [aggregate] [balance remaining owing in respect of the] principal money secured by the within [above] written [annexed] mortgage [and by a further charge dated, &c., *or otherwise as required*] together with all interest and costs, the payment having been made by *C.D.* of [&c.] and *E.F.* of [&c.].

As witness, &c.

Note.—If the persons paying are not entitled to the equity of redemption state that they are paying the money out of a fund applicable to the discharge of the mortgage.

(*b*) As to the effect of this form of receipt, which is new, see s. 115, *sup.*, and note thereto. In proper cases it will operate as a transfer. As to cesser of mortgage terms: s. 116, *sup.*

FOURTH SCHEDULE.

FORMS RELATING TO STATUTORY CHARGES OR MORTGAGES OF FREEHOLD OR LEASEHOLD LAND.

FORM NO. 1.

Section 117.

STATUTORY CHARGE BY WAY OF LEGAL MORTGAGE (*c*).

This Legal Charge made by way of Statutory Mortgage the day of 19 , between *A.* of [&c.] of the one part and *M.* of [&c.] of the other part Witnesseth that in consideration of the sum of £ now paid to *A.* by *M.* of which sum *A.* hereby acknowledges the receipt *A.* As Mortgagor and As Beneficial Owner hereby charges by way of legal mortgage

All that [&c.] with the payment to *M.* on the day of 19 , of the principal sum of £ as the mortgage money with interest thereon at the rate of per centum per annum.

In witness, &c.

Note.—Variations in this and the subsequent forms in this Schedule to be made, if required, for leasehold land or for giving effect to special arrangements. *M.* will be in the same position as if the Charge had been effected by a demise of freeholds or a sub-demise of leaseholds.

FORM NO. 2.

Section 118.

STATUTORY TRANSFER, MORTGAGOR NOT JOINING (*d*).

This Transfer of Mortgage made by way of statutory transfer the day of 19 , between *M.* of [&c.] of the one part and *T.* [of &c.] of the other part supplemental to a legal charge made by way of statutory

(*c*) This form replaces the form of statutory mortgage contained in C. A., 1881, 3rd Sch., Pt. I., as amended by C. A., 1911, s. 15, with further amendments. It is essential that the mortgagor should charge "as mortgagor and as beneficial owner." As to the covenant for payment and provision for discharge implied, see s. 117, *sup.*; and as to the effect of a charge by way of legal mortgage: s. 87, *sup.* As to joint and several implied covenants in such a deed: s. 119, *sup.* The date when the legal right of redemption ceases is clear from s. 117 (2).

(*d*) This reproduces the form of statutory transfer contained in C. A., 1881, 3rd Sch., Pt. II. (A), with amendments, and is made applicable to a transfer of a legal charge by way of statutory mortgage. As to its effect, see s. 118 (1), (2), *sup.*

mortgage dated [&c.] and made [&c.] Witnesseth that in consideration of the sum of £ now paid to *M.* by *T.* (being the aggregate amount of £ mortgage money and £ interest due in respect of the said legal charge of which sum *M.* hereby acknowledges the receipt) *M.* as Mortgagee hereby conveys and transfers to *T.* the benefit of the said legal charge.

In witness, &c.

Note.—This and the next two forms also apply to a transfer of a statutory mortgage made before the commencement of this Act, which will then be referred to as a mortgage instead of a legal charge.

Section 118.

Form No. 3.

Statutory Transfer, A Covenantor Joining (*e*).

This Transfer of Mortgage made by way of statutory transfer the day of 19 , between *A.* of [&c.] of the first part *B.* of [&c.] of the second part and *C.* of [&c.] of the third part Supplemental to a Legal Charge made by way of statutory mortgage dated [&c.] and made [&c.] Witnesseth that in consideration of the sum of £ now paid by *A.* to *C.* (being the mortgage money due in respect of the said Legal Charge no interest being now due or payable thereon of which sum *A.* hereby acknowledges the receipt) *A.* as Mortgagee with the concurrence of *B.* who joins herein as covenantor hereby conveys and transfers to *C.* the benefit of the said Legal Charge.

In witness, &c.

Sections 117 and 118.

Form No. 4.

Statutory Transfer and Mortgage Combined (*f*).

This Transfer and Legal Charge is made by way of statutory transfer and mortgage the day of 19 , between *A.* of [&c.] of the first part *B.* of [&c.] of the second part and *C.* of [&c.] of the third part

(*e*) This reproduces, with amendments, the form of statutory transfer, where a covenantor joins, contained in C. A., 1881, 3rd Sch., Pt. II. (B). As to its effect, see s. 118 (1), (2) and (3), *sup.*

(*f*) This reproduces, with amendments, the form of statutory transfer and mortgage contained in C. A., 1881, 3rd Sch., Pt. II. (C): see ss. 117 and 118, *sup.*

Supplemental to a Legal Charge made by way of statutory mortgage dated [&c.] and made [&c.]

Whereas a principal sum of £ only remains due in respect of the said Legal Charge as the mortgage money and no interest is now due thereon

And whereas *B.* is seised in fee simple of the land comprised in the said Legal Charge subject to that Charge.

Now this Deed Witnesseth as follows:—

1. In consideration of the sum of £ now paid to *A.* by *C.* (the receipt and payment of which sum *A.* and *B.* hereby respectively acknowledge)* *A.* as mortgagee hereby conveys and transfers to *C.* the benefit of the said Legal Charge.

2. For the consideration aforesaid *B.*† as beneficial owner hereby charges by way of legal mortgage All the premises comprised in the said Legal Charge with the payment to *C.* on the day of 19 of‡ the sum of £ as the mortgage money with interest thereon at the rate of per centum per annum In Witness &c. [or in the case of a further advance after "acknowledge" *at* * *insert* "and of the further sum of £ now paid by *C.* to *B.* of which sum *B.* hereby acknowledges the receipt" *also at* † *before* "as beneficial owner" *insert* "as mortgagor and" *as well as where B. is not the original mortgagor. And after* "of" *at* ‡ *insert* "the sums of £ and £ making together"].

Note.—Variations to be made, as required, in case of the deed being by indorsement, or in respect of any other thing.

Section 120.

Form No. 5.

Receipt on Discharge of Statutory Legal Charge or Mortgage (*g*).

I *A.B.* of [&c.] hereby acknowledge that I have this day of 19 received the sum of £ representing the [aggregate] [balance remaining owing in

(*g*) This takes the place of a statutory reconveyance of mortgage, such as contained in C. A., 1881, 3rd Sch., Pt. III. As to the effect of this receipt, see s. 120. If the persons paying are not entitled to the immediate equity of redemption, the mortgage not being paid off out of trust money properly applicable for the discharge thereof, and there is no express provision against the receipt being a transfer, the provisions of s. 115 (2) will apply, and the receipt will operate as a transfer.

respect of the] mortgage money secured by the [annexed] within [above] written statutory legal charge [*or* statutory mortgage] [and by the further statutory charge dated &c. *or otherwise as required*] together with all interest and costs the payment having been made by *C.D.* of [&c.] and *E.F.* of [&c.]

As witness, &c.

Note.—If the persons paying are not entitled to the equity of redemption state that they are paying the money out of a fund applicable to the discharge of the statutory legal charge or mortgage.

FIFTH SCHEDULE.

Forms of Instruments.

Section 206.

Form No. 1.

Charge by way of Legal Mortgage (*h*).

This Legal Charge is made [&c.] between *A.* of [&c.] of the one part and *B.* of [&c.] of the other part.

[*Recite the title of A. to the freeholds or leaseholds in the Schedule and agreement for the loan by B.*]

Now in consideration of the sum of pounds now paid by *B.* to *A.* (the receipt &c.) this Deed witnesseth as follows:—

1. *A.* hereby covenants with *B.* to pay [*Add the requisite covenant to pay principal and interest*].

2. *A.* as Beneficial Owner hereby charges by way of legal mortgage All and Singular the property mentioned in the Schedule hereto with the payment to *B.* of the principal money, interest, and other money hereby covenanted to be paid by *A.*

3. [*Add covenant to insure buildings and any other provisions desired.*]

In witness [&c.] [*Add Schedule*].

Note.—*B.* will be in the same position as if a mortgage had been effected by a demise of freeholds or a sub-demise of leaseholds.

(*h*) This form is new: *cf.* C. A., 1881, 4th Sch., Form I. As to the effect of a charge by way of legal mortgage: s. 87, *sup.* It may be expedient to state when the legal right of redemption ceases: *Williams* v. *Morgan*, 1906, 1 Ch. 804; *Teulon* v. *Curtis*, Younge, 610.

FORM NO. 2.

FURTHER CHARGE BY WAY OF LEGAL MORTGAGE (*k*).

This Further Charge made [&c.] between [&c.] [*same parties as foregoing legal charge*] Supplemental to a Legal Charge (hereinafter called the Principal Deed) dated [&c.] and made between the same parties as are parties hereto and in the same order for securing the sum of £ and interest at per centum per annum on [freehold] [leasehold] land at [&c.].

Witnesseth as follows:—

1. In consideration of the further sum of £ now paid to *A.* by *B.* [*add receipt and covenant to pay the further advance and interest*].

2. For the consideration aforesaid *A.* as Beneficial Owner hereby charges by way of legal mortgage the premises comprised in the Principal Deed with the payment to *B.* of the principal money and interest hereinbefore covenanted to be paid as well as the principal money, interest, and other money secured by the Principal Deed.

In witness [&c.].

FORM NO. 3.

CONVEYANCE ON SALE, LEGAL CHARGEES OR MORTGAGEES CONCURRING (*l*).

This Conveyance is made [&c.] between *A.* of [&c.] (hereinafter called the Vendor) of the first part *B.* of [&c.] and *C.* of [&c.] (hereinafter called the Mortgagees) of the second part and *D.* of [&c.] (hereinafter called the Purchaser) of the third part [*Recite the Charge by way of legal mortgage, the state of the debt, the agreement for sale and for the mortgagees to concur*].

Now in the consideration of the sum of £ paid by the Purchaser by the direction of the Vendor to the Mortgagees (*the receipt &c.*) and of the sum of £

(*k*) This form reproduces, with amendments, Form No. II. in C. A., 1881, 4th Sch. As to further advances: s. 94, *sup.*

(*l*) This form reproduces, with amendments, Form III. in C. A., 1881, 4th Sch. Words of limitation are not strictly necessary: s. 60, *sup.*, and note thereto; as to merger of mortgage terms: s. 116, *sup.*; as to acknowledgments: s. 64.

paid by the Purchaser to the Vendor (*the receipt &c.*) this Deed witnesseth as follows:—

1. The Vendor As Beneficial Owner hereby conveys and the Mortgagees As Mortgagees hereby [surrender and] release unto the Purchaser All That &c.

To Hold unto the Purchaser [in fee simple] discharged from all claims under the recited Legal Charge [Mortgage and to the intent that the term subsisting thereunder shall as respects the premises conveyed merge and be extinguished].

2. [*Add any necessary acknowledgments and undertakings with respect to documents not handed over which relate to the title and any other special provisions.*]

In witness &c.

Form No. 4.

Conveyance on Sale by Legal Chargees or Mortgagees (*m*).

This Conveyance is made [&c.] between *A.* of [&c.] and *B.* of [&c.] (hereinafter called the Vendors) of the one part and *C.* of [&c.] (hereinafter called the Purchaser) of the other part [*Recite the Legal Charge or the Mortgage, with or without a deed converting the Mortgage into a legal charge and the agreement for sale*].

Now in consideration of the sum of £ paid by the Purchaser to the Vendors (the receipt &c.) this Deed witnesseth as follows:—

1. The Vendors As Mortgagees in exercise of the power for this purpose conferred on them by the Law of Property Act, 1925, and of all other powers hereby convey unto the Purchaser All Those &c.

To Hold unto the Purchaser [in fee simple] discharged from all right of redemption and claims under the recited Legal Charge [Mortgage].

2. [*Add any necessary acknowledgments as to documents retained and any other special provisions.*]

In witness &c.

(*m*) This form is new; as to the effect of this conveyance under the statutory powers of sale, see ss. 88, 104.

FORM NO. 5.

CONVEYANCE BY PERSONAL REPRESENTATIVES OF A FEE SIMPLE RESERVING THEREOUT A TERM OF YEARS ABSOLUTE FOR GIVING LEGAL EFFECT TO A MORTGAGE (*n*).

This Conveyance is made [&c.] between *James Cook* of [&c.] and *Harry Cook* of [&c.] of the first part, *L.* of [&c.] and *M.* of [&c.] of the second part, and *Thomas Wilson* of [&c.] of the third part.

Whereas on the first day of October 1927 Letters of Administration to the real and personal estate of *Henry Wilson*, late of [&c.], who died [&c.], were granted by the principal probate registry to *James Cook* and *Harry Cook*.

And whereas *Henry Wilson* was at his death solely entitled to the hereditaments hereinafter conveyed for an estate in fee simple.

Now this Deed witnesseth that *James Cook* and *Harry Cook*, as Personal Representatives of the said *Henry Wilson* deceased, hereby convey unto the said *Thomas Wilson*

All that [&c.]

Reserving out of the premises nevertheless unto *L.* and *M.* a term of eight hundred years, without impeachment of waste, to commence from the date hereof but subject to cesser on redemption by *Thomas Wilson* under a Mortgage dated [&c.] and made between [&c.] on payment of the sum of five thousand pounds, and interest thereon at the rate of five pounds per centum per annum.

To hold the premises subject to the said term unto *Thomas Wilson* [in fee simple].

In witness [&c.].

Note.—The reservation will be valid at law, though the deed may not be executed by *Thomas Wilson*.

(*n*) This form is new. As to conveyances and assents by personal representatives: Ad. of E. A., 1925, ss. 36, 38; S. L. A., 1925, s. 8. It assumes that an equitable mortgage by demise was created by Thomas Wilson before the executors had assented. As to giving effect to equitable interests: s. 3, *sup.*; S. L. A., 1925, s. 16. If an assent had been made, it would have related back to the death: Ad. of E. A., 1925, s. 36; and the mortgage by demise would have become a legal mortgage by estoppel. Legal effect might have been given to the mortgage by a charge by way of legal mortgage. This would have been a better way of carrying out the transaction; the assent or conveyance would then have been made separately; the form was inserted to illustrate the effect of a legal reservation: s. 65, *sup.* An assent may be made subject to a legal estate: Ad. of E. A., 1925, s. 36 (10); but not to an equitable interest.

Form No. 6.

Conveyance on Sale reserving Minerals and Right to Work and a Perpetual Rentcharge (*p*).

This Conveyance made [&c.] between *A.* of [&c.] of the one part and *B.* of [&c.] of the other part.

Witnesseth that in consideration of the sum of pounds now paid by *B.* to *A.* (the receipt, &c.) and of the rentcharge hereinafter reserved *A.* as Beneficial Owner hereby conveys unto *B.*

All those [&c.] except and reserving unto *A.* in fee simple all mines and minerals Together with full power to work [&c.]

To hold (except and reserved as aforesaid) unto *B.* in fee simple reserving out of the premises to *A.* in fee simple a perpetual yearly rentcharge of pounds, to be for ever charged upon and issuing out of the premises hereby conveyed clear of all deductions (except landlord's property tax), and payable by equal half-yearly payments on [&c.], the first payment to be made on [&c.]

And *B.* hereby covenants with *A.*, and the persons deriving title under him to pay [&c.]

In witness [&c.]

Note.—The reservations will be valid at law even if the deed is not executed by *B.*

Form No. 7.

Deed for confirming Legal Estates which have not been validly created (*q*).

To All to whom this Further Assurance shall come *A.B.* of &c. sends greeting this day of 19 .

Recite the invalid dealings, giving short particulars in schedules of the Conveyances, Grants and Leases which purport to transfer or create legal estates, that A.B. is

(*p*) This form is new; it was inserted further to illustrate methods of reserving legal estates: s. 65, *sup.* As to the remedies for recovery of rentcharges: s. 121, *sup.*; a *terre tenant* is liable to pay independently of a covenant: see note to that s.

(*q*) This form is new: see s. 66, *sup.*, and note thereto; if the grantor is in a fiduciary position, the leave of the court must be obtained unless the trust instrument authorises the power to be exercised without such leave: *ib.*, sub-s. (2).

entitled in fee simple or for a term of years absolute in the land affected and desires to confirm the dealings.]

Now these presents witness and the said *A.B.* hereby declares that his legal estate in the premises affected to which he is entitled as aforesaid shall go and devolve in such manner as may be requisite for legally confirming the interests capable of subsisting as legal estates expressed to have been transferred or created by the documents mentioned in the schedules hereto or any of those documents and any dealings with the interests so confirmed which would have been legal if those interests had in the first instance been validly transferred or created:

Provided always that subject to such confirmation of interests and dealings nothing herein contained shall affect the legal estate of the said *A.B.* in the premises.

In witness, &c. [*Add Schedules.*]

Note.—This form takes the place of a conveyance to uses for confirming past transactions and is applicable to a term of years absolute as well as a fee simple.

FORM NO. 8.

ASSENT BY PERSONAL REPRESENTATIVE IN FAVOUR OF A PERSON ABSOLUTELY ENTITLED FREE FROM INCUMBRANCES (*r*).

I, *A.B.*, of [&c.] as the personal representative of *X.Y.*, late of [&c.] deceased, do this day of 19 hereby, As Personal Representative, assent to the vesting in *C.D.* of [&c.] of [All that farm &c.] *or* [All the property described in the Schedule hereto] for all the estate or interest of the said *X.Y.* at the time of his death [*or*, for an estate in fee simple].

As witness, &c.

Note.—The expression "conveyance" includes an assent, but an assent will relate back to the death unless a contrary intention appears. An assent may be

(*r*) This form is new. For an assent on the trusts of a settlement: S. L. A., 1925, 1st Sch., Form 5. As to assents by personal representatives: Ad. of E. A., 1925, ss. 36, 38; S. L. A., 1925, s. 8. They take the place of conveyances and do not carry any stamp duty. They are not confined to giving effect to devises or bequests, but may be made in favour of any person interested (not being a purchaser for money's worth), whether beneficially or in a fiduciary capacity. They draw a curtain across the equitable interests. Assents.

properly given though duties remain to be paid if the personal representative is satisfied in regard to the arrangements made for payment (*s*).

Form No. 9.

Assent by Personal Representatives in Favour of Trustees for Sale (*t*).

We, *A.B.*, of [&c.] and *C.D.*, of [&c.] as the Personal Representatives of *X.Y.*, late of [&c.] deceased do this day of 19 hereby:—

1. As Personal Representatives assent to the vesting in [ourselves *or*] *T.A.* of [&c.] and *T.B.* of [&c.] of All Those &c. To Hold unto [ourselves *or*] the said *T.A.* and *T.B.* in fee simple Upon trust to sell the same or any part thereof with full power to postpone the sale and to stand possessed of the net proceeds of sale and other money applicable as capital and the net rents and profits until sale upon the trusts respectively declared concerning the same [*or* the proceeds of sale and the rents and profits of certain property at] by the Will dated [&c.] of [&c.] [*or* by the Settlement dated &c. *or otherwise as the case may require*].

2. And declare that *F.* of [&c.] and *M.* of [&c.]

(*s*) An administrator may make an assent in the same way as an executor. An assent not in writing will not pass a legal estate; it must be made in favour of a named person. An assent under Ad. of E. A., 1925, s. 36, may be made though the testator or intestate died before 1926.

Giving possession.

Possession may be given by a personal representative before assenting without prejudice to his right to resume possession: Ad. of E. A., 1925, s. 43. But when an assent is given it will operate to pass the possession without actual entry: ss. 51, 205 (1) (ii), *sup.*; for it operates as a conveyance: Ad. of E. A., 1925, s. 36; S. L. A., 1925, s. 8.

Death duties.

An assent must not be postponed merely because death duties have not been discharged: Ad. of E. A., 1925, s. 36 (10); S. L. A., 1925, 2nd Sch., para. 2 (3) (b); as to reserving a term by deed: *ib.*, s. 8 (6).

Assents on trust for sale.

(*t*) This form is new: see note to last form. A person may vest land in himself: s. 72 (3), *sup.* Thus a will containing a trust for sale will not in future be recited. The probate will be recited, then will follow the assent containing the trust for sale. The will is an instrument relating to equitable interests, while the assent relates to the legal estate.

Vesting assents where the land is settled.

Similarly, if the will creates a settlement, it will not be recited; the assent will be in favour of the tenant for life and will name the S. L. A. trustees: S. L. A., 1925, 1st Sch., Form 5; the will drops off the title subject only to the freak cases mentioned *ib.*, s. 110 (2) (i), (ii), (iii), so far as not covered by a certificate of counsel as to title under the General Conditions of 1925.

Thus assents form a most important part of the curtain scheme.

during their joint lives and the survivor of them during his or her life have or has power to appoint new trustees of this Assent [*or* "that the statutory power to appoint new trustees applies to this Assent" *or otherwise as the case requires to correspond with the power applicable to the Will or Settlement*].

As witness &c.

SIXTH SCHEDULE.

EPITOMES OF ABSTRACTS OF TITLE. Section 206.

SPECIMEN No. 1.

OF THE TITLE OF JOHN WILLIAMS TO BLACKACRE (*a*).

WHERE THE TITLE COMMENCES BEFORE THE COMMENCEMENT OF THIS ACT (*b*).

The italics show how the abstract is to be framed and what documents are to be abstracted. After the commencement of this Act, the parts not in italics may be ignored.

Will of H. Jones, appointing Maria Jones and W. Jones executors and Settled Land Act trustees. 10th June 1897 (*c*).

Devises, Blackacre.

To the use that Maria Jones may receive a yearly rentcharge of five hundred pounds for her life, and, subject thereto,

To the use of W. Jones for life with remainder,

To the use of *X.* and *Y.*, for a term of one thousand years, and subject thereto,

(*a*) This epitome shows how title is acquired through John Williams by a company, the X. Company, acting under compulsory powers.

If the right of pre-emption of John Williams is not registered under L. C. A., 1925, s. 10, Class C. (iv), the right can be defeated by the company on a sale of superfluous land. For other specimens of epitomes illustrating points of practice, see 1 Prid., 22nd ed., ch. v. Pre-emption.

(*b*) The 1st January, 1926: s. 209, *sup.*

(*c*) The limitations of this will down to the life estate are material: S. L. A., 1925, ss. 9, 110 (2), proviso; unless counsel's certificate as to title given pursuant to the General Conditions of 1925, when the vesting instrument of 20th January, 1926, is executed, is relied on. After that vesting instrument is executed the portions term of 1,000 years becomes an equitable interest: S. L. A., 1925, 2nd Sch., para. 1 (6). The jointure becomes an equitable interest by virtue of s. 1 (3) and 1st Sch., Pt. I., *sup.*

To the use of the first and other sons of W. Jones in tail with remainders over.

Trusts of term of one thousand years declared for raising ten thousand pounds for portions for younger children of W. Jones, as he shall appoint, and in default equally.

Hotchpot Clause. Power to appoint new trustees.

4th June, 1898. *Death of H. Jones.*

1st August, 1898. *Will of H. Jones proved.*

[NOTE.—After the execution of the Vesting Deed the will only takes effect in equity and can be withdrawn from the abstract when not required as a root of title.]

20th August, 1899. *Conveyance by the executors to the uses of the Will.*

2nd September, 1915 (*d*). *Appointment of R. and S. to be Settled Land Act trustees of the will in place of Maria Jones and W. Jones who retire.*

1st January, 1926. The Settled Land and Law of Property Acts, 1925, come into operation.

[NOTE.—The legal estate in fee simple will vest in W. Jones in fee simple, but he cannot deal with it till the vesting deed is executed (*e*).]

20th January, 1926. *Deed by the Settled Land Act trustees declaring the fee simple is vested in Ws. Jones on the trusts of the Will and stating that they are the trustees of the settlement (f).*

2nd February, 1926. Appointment by W. Jones of five thousand pounds, part of the ten thousand pounds, to his daughter, Ann Jones.

3rd February, 1926. Assignment by Ann Jones of her five thousand pounds, part of the ten thousand pounds raisable for portions, to trustees *F.* and *G.* on her marriage to J. Robinson.

4th February, 1926. Will of W. Jones, appointing T. Brooks his executor (*g*).

(*d*) This appointment is material: S. L. A., 1925, s. 110 (2), proviso.

(*e*) It vests under 1st Sch., Pt. II., *sup.;* for the restriction on dealings: S. L. A., 1925, ss. 13 and 18.

(*f*) For a form, see S. L. A., 1925, 1st Sch., Form No. I.

Counsel's certificate. After this vesting deed, if the General Conditions of 1925 are applicable, counsel's certificate of title should be abstracted if one has been obtained; in this case the prior equitable interests need not be investigated.

(*g*) The will is not abstracted, for probate alone is evidence that the legal estate has vested in *R.* and *S.:* Ad. of E. A., 1925, s. 22.

Death of W. Jones leaving three children, Frederick Jones, his eldest son, and E. Jones and Ann Robinson.	6th March, 1926.
Disentail by Frederick Jones in trust for himself in fee simple.	2nd April, 1926.
Will of W. Jones proved by R. and S. in regard to the settled land.	3rd May, 1926.
Mortgage by E. Jones of his one-half of the ten thousand pounds to *K.*	6th June, 1926.
Death of Maria Jones, jointress.	1st December, 1926.
Release by *F.* and *G.* on payment to them of the five thousand pounds of Ann Robinson.	2nd January, 1927.
Release by E. Jones and *K.*, his mortgagee, of the five thousand pounds raisable for E. Jones.	Same date.
Assent by R. and S., as personal representatives to Frederick Jones in fee, without nominating Settled Land Act trustees (*h*).	3rd January, 1927.
[NOTE.—If the Assent had been made before the family charges had been cleared, the personal representatives would have nominated themselves as being the trustees of the settlement, and a discharge from them would have been required when the charges were cleared (*i*).]	
Mortgage either by charge by way of legal mortgage or for a term of one thousand years by Frederick Jones to the Estate Trustees of the C. Assurance Society to secure five thousand pounds and interest (*k*).	6th February, 1927.
Second mortgage either by charge by way of legal mortgage or for a term of two thousand years by Frederick Jones to *D.*, to secure three thousand pounds and interest.	20th March, 1927.
Third mortgage either by charge by way of legal mortgage or for a term of three thousand years by Frederick Jones to *E.*, to secure two thousand pounds and interest.	1st June, 1927.

(*h*) The assent is complete evidence in favour of a purchaser, without investigating the equitable title, that Frederick Jones is entitled to the fee simple: Ad. of E. A., 1925, s. 36; S. L. A., 1925, ss. 7 (5), 110 (5). It is assumed that the executors are satisfied that the duties will be paid: Ad. of E. A., 1925, s. 36 (10); S. L. A., 1925, s. 8 (6). They can give possession before assenting: Ad. of E. A., 1925, s. 43.

(*i*) S. L. A., 1925, ss. 3 (duration of settlement), 17 (deed of discharge), 18 (restrictions till discharge).

(*k*) See ss. 85, 87, *sup.*

8th August, 1927. Conveyance by Frederick Jones on his marriage (subject to above mortgages) to *M.* and *N.* upon trust for sale, the proceeds of sale being settled by a deed of even date.

12th November, 1927. Death of *M.*

20th December, 1927. Appointment of *F.* as trustee of the conveyance on trust for sale in the place of *M.*, and jointly with *N.*

10th June, 1928. *Conveyance by the then Estate Trustees of the C. Assurance Society, under their power of sale as first mortgagees, to John Williams in fee.*

[Note.—The title being made under the power of sale of the Estate Trustees, the fee simple passes and not merely the mortgage term (*l*). They can if desired convey the fee in the names of *M.* and *N.* (*m*). It is unnecessary to disclose the second and third mortgages or the conveyance on trust for sale. It would have been necessary to disclose them if title had been made by the trustees for sale, as the mortgages and the conveyance all dealt with legal estates. The right to vest the debt and mortgaged property in Estate Trustees by memorial enrolled under a Private Act is preserved (*n*).

No evidence of deaths, births, &c., is required. Probate of the will of H. Jones is conveyancing evidence of his death.]

12th January, 1929. John Williams leaves Great Britain and Northern Ireland is believed to be alive but cannot be found.

10th August, 1929. *Private Act passed authorising the X. Company to acquire Blackacre under compulsory powers.*

15th June, 1930. *Statutory declaration as to facts known with reference to John Williams.*

16th June, 1930. *Deed Poll by X. Company (who by their agent (o) also execute in the name of John Williams) under section*

Land charges when overreached.

(*l*) See s. 88, *sup.* This is a case of legal estates being overreached; the second and third mortgagees would register land charges: L. C. A., 1925, s. 10, Class C. (i); but this does not prevent them from being overreached by the first mortgagees: *ib.*, s. 22.

(*m*) "*M.* and *N.*" is a misprint for "*N.* and *F.*"

(*n*) See s. 7 (3), *sup.*

Agents for corporations.

(*o*) As to corporations acting as attorneys: s. 74, *sup.* When practicable the powers for transferring legal estates must be exercised in the name of the estate owner: s. 7 (4), *sup.*

seventy-seven of the Lands Clauses Consolidation Act, 1845, vesting the land in themselves.

[NOTE.—This is an example of an exercise of a power over a legal estate the operation of which is expressly preserved (*p*).]

SPECIMEN NO. 2.

OF THE TITLE OF THE TRUSTEES OF FRANK SMITHERS TO GREENACRE.

RELATING TO UNDIVIDED SHARES.

Mortgage by James Smith of Greenacre to M. Coy., Ltd. in fee to secure 1,000l. and interest.	2nd January, 1910.
Will of James Smith devising Greenacre to his ten children named therein in equal shares and appointing E. to be his executor.	4th February, 1910.
Death of James Smith, leaving the ten children surviving.	1st March, 1910.
Probate by E.	3rd April, 1910.
Assent by E. to the devise to the ten children.	4th December, 1910.
Mortgage by one of the sons of his tenth share.	5th January, 1911.
Conveyance by one of the daughters on her marriage of a tenth share to trustees on trust for sale, the net proceeds to be held on the trusts of her settlement of even date.	15th April, 1911.
Settlement by another of the sons of his tenth share and appointing Settled Land Act trustees.	20th May, 1911.
Will of another daughter devising her tenth to her husband and appointing him executor.	8th June, 1913.
Death of the testatrix.	20th June, 1913.
Probate by her husband.	4th August, 1913.
Death of another son intestate.	2nd May, 1918.
Letters of administration granted to two of his brothers.	30th July, 1918.
The Law of Property Act, 1925, comes into operation and vests Greenacre, subject only to the mortgage of 1910 affecting the entirety (which is converted (*a*) into a mortgage for a term of three thousand years), in the	1st January, 1926.

(*p*) See s. 7 (3), *sup.*
(*a*) See 1st Sch., Pt. VII., *sup.*

Public Trustee, pending the appointment of new trustees, on trust for sale (*b*).

4th June, 1926. *Order of the court (Chancery Division) made on the application of persons entitled to six tenths, appointing M. and N. to be trustees of the trust affecting Greenacre in place of the Public Trustee (c).*

7th May, 1927. *Conveyance on sale to Walter Robinson by M. and N., the M. Company, Limited, being paid off out of part of the purchase money, and joining to surrender the three thousand years term.*

[NOTE.—The balance of the purchase money is available in the hands of the trustees to answer the claims of the mortgagee and other persons interested in undivided shares (*d*).]

4th June, 1927. Will of Walter Robinson devising and bequeathing Greenacre and his residuary real and personal estate to *X.* and *Y.* upon trust for his son John Robinson for life with remainder upon trust for his first and other sons successively according to seniority in tail male with remainder upon trust for the same sons in tail general with remainder upon trust for all the daughters of John Robinson as tenants in common in tail with cross remainders in tail between them in equal shares. Appointment of *X.* and *Y.* to be executors and Settled Land Act trustees.

1st December, 1927. Death of testator.

20th April, 1928. *Probate by X. and Y.*

3rd May, 1928. *Assent by X. and Y. vesting the settled land in John Robinson upon the trusts of the will of Walter Robinson, and stating that they are the trustees of the settlement (e).*

14th July, 1928. Will of John Robinson appointing his daughters Mary Robinson and Jane Robinson his executors.

16th March, 1930. Death of John Robinson without having had a son and leaving five daughters.

(*b*) See 1st Sch., Pt. IV., para. 1 (4), *sup.*

(*c*) This assumes that it is simpler to apply to the court than for the persons entitled to six-tenths to obtain the consent of incumbrancers of undivided shares: 1st Sch., Pt. IV., para. 1 (4) (iii), *sup.*

(*d*) See s. 35, *sup.*, respecting "statutory trusts."

(*e*) For form of vesting assent: S. L. A., 1925, 1st Sch., Form No. 5: see also notes to Forms 8 and 9 in 5th Sch., *sup.*

Probate by X. and Y. in regard to the settled land (*f*). 12th June, 1930.

Assent by X. and Y. to the vesting of the settled land in themselves on trust for sale, the net proceeds to be held on the trusts of the will of Walter Robinson (*g*). 25th July, 1930.

Conveyance on sale by X. and Y. of Greenacre to Frank Smithers in fee. 7th January, 1931.

Equitable charge by Frank Smithers to James Montagu by way of indemnity and agreement to vest Greenacre in a trust corporation on trust for sale to raise the money when the amount is ascertained and for other purposes. 8th January, 1931.

[NOTE.—A mere equitable charge not secured by deposit of documents can be overridden when the land is made subject to a trust for sale (*h*) without joining the chargee.]

Lease by Frank Smithers of part of Greenacre to his wife for life at a rent. 9th January, 1932.

[NOTE.—A lease for life is made to take effect as a demise for a term of ninety years determinable by notice after the death of the lessee by his representatives or by the lessor (*i*).]

Conveyance by Frank Smithers, of Greenacre, to a trust corporation on trust for sale subject to the lease. The net proceeds to be held on the trusts of a deed of even date, under which effect is given to the Agreement of 1931. 23rd June, 1933.

(*f*) See Ad. of E. A., 1925, s. 22.

(*g*) The legal estate is already vested in them as special executors; they are the persons entitled to have a vesting instrument: S. L. A., 1925, s. 36; and *cf.* 1st Sch., Pt. IV., para. 2, *sup.*; for a form of an assent on trust for sale, see 5th Sch., Form No. 9, *sup.*; and as to vesting in themselves: s. 72, *sup.* A vesting instrument is necessary, though S. L. A., 1925, s. 13, does not apply when winding up the executorship. Vesting assents.

(*h*) S. 2 (2), *sup.*; the registration of a general equitable charge as a land charge would not prevent the charge from being overreached: *ib.*, sub-s. (3) (v) (b).

(*i*) S. 149 (6), *sup.*

Specimen No. 3.

Of the Title of R. Horne to Whiteacre.

Where the Title commences after the Commencement of this Act.

4th July, 1926 (*a*). *Settlement by John Wilson, being a deed declaring that Whiteacre is vested in himself in fee upon the trusts of a deed of even date.*

Appointment of R. and S. to be trustees for the purposes of the Settled Land Act, 1925.

Provisions extending the powers conferred by the Settled Land Act, so far as they relate to dealings with land, and giving power for John Wilson during his life to appoint new trustees.

Same date. Trust Instrument.

Trusts declared for John Wilson for life, with remainder.

Upon trust that Elizabeth Wilson, if she survives him shall have a rentcharge of 200*l.* during the residue of her life, and subject thereto.

Upon trust for *R.* and *S.* for a term of five hundred years to raise five thousand pounds portions for younger children of John Wilson, with remainder.

Upon trust for Henry Wilson for life, with remainder.

Upon trust for *H.* and *K.* for a term of one thousand years to raise five thousand pounds portions for younger children of Henry Wilson, with remainder.

Upon trust for the first and other sons of Henry Wilson successively in tail, with further remainders over. Appointment of *R.* and *S.* to be Settled Land Act trustees. Extension of Settled Land Act powers by reference to the Vesting Deed of even date or otherwise. Power for tenant for life of full age to appoint new trustees.

4th September, 1926 (*b*). Appointment of new trustee of the Trust Instrument and of the five hundred years' term.

Settlements, how made. (*a*) For forms of vesting instrument and trust instrument: S. L. A., 1925, 1st Sch., Forms Nos. 2 and 3; and see *ib.*, s. 4; unless made in this way the settlement will not pass the legal estate. For the protection of a purchaser without notice, see *ib.*, s. 13.

Appointments of trustees. (*b*) S. L. A., 1925, ss. 35, 110 (2) (b) (d); T. A., 1925, s. 35. Appointments of new trustees of settlements will not be abstracted, but only the deed of even date declaring who have become the trustees: *ib.* There must not be more than four trustees: T. A., 1925, s. 34; as to evidence of a vacancy in a trust: *ib.*, s. 38; as to implied vesting declaration: *ib.*, s. 40.

Recites that *S.* is incapable of acting. Appointment by John Wilson of *P.* to be trustee of the term of five hundred years and for the purposes of the Trust Deed in the place of *S.* and jointly with *R.* Declaration (express or implied) vesting the equitable term of five hundred years in *R.* and *P.*

Deed stating that R. and P. are the trustees of the settlement. Memorandum of the deed endorsed on the Vesting Deed (*b*). Same date.

Will of John Wilson appointing Isaac James and Joseph James executors. 7th January, 1927.

Death of John Wilson, leaving younger children and his widow. 3rd September, 1927.

Will of John Wilson proved by R. and P. in regard to the settled land (*c*). 4th April, 1928.

Assignment by *R.* and *P.* to *B.* of term of five hundred years by way of mortgage for securing five thousand pounds and interest. 1st October, 1928.

[NOTE.—As money has been raised on the term the mortgagee could call on the executors to create a legal term for securing it in priority to the settlement (*d*).]

Assent by R. and P., as personal representatives, to the vesting of the settled land in Henry Wilson in fee upon the trusts of the Trust Deed. 2nd December, 1928.

Statement that R. and P. are the trustees of the settlement. Power for Henry Wilson during his life to appoint new trustees.

The same provisions for extending powers conferred by the Settled Land Act as are contained in the Vesting Deed.

[NOTE.—These may be inserted either expressly, if short, or by reference to the former Vesting Deed, if long (*e*).]

Appointment of James Cook and Harry Cook to be trustees of the Trust Deed. 2nd June, 1929.

Deed stating that they are the trustees of the settlement. Endorsement of notice on the Vesting Deed (*f*). 2nd June, 1929.

(*b*) See previous page.
(*c*) Ad. of E. A., 1925, s. 22.
(*d*) S. L. A., 1925, s. 16.
(*e*) *Ib.*, s. 5 (2).
(*f*) *Ib.*, s. 35; T. A., 1925, s. 35.

4th November, 1929. Transfer of the mortgage for five thousand pounds by *B.* to *C.*

10th July, 1930. Death of Henry Wilson, leaving Thomas Wilson, his eldest son, and two younger children.

1st October, 1930. *Letters of Administration to the settled land of Henry Wilson granted to James Cook and Harry Cook* (*g*).

3rd November, 1930. Disentail by Thomas Wilson (*h*).

4th November, 1930. Release by *C.* on payment off of his mortgage debt of five thousand pounds and surrender of the equitable term of five hundred years.

10th November, 1930. Death of Elizabeth Wilson.

[NOTE.—Though her jointure took effect in equity only she has power to create a term of years absolute for raising arrears of the jointure, and the estate owner would be bound to give legal effect to a mortgage of the term (*i*).]

20th November, 1930. Release by two younger children of Henry Wilson of their portions.

Same date. Demise by Thomas Wilson to *L.* and *M.* for an equitable term of eight hundred years, subject to cesser on payment of five thousand pounds and interest.

Same date. *Demise by James Cook and Harry Cook to L. and M. for the term of eight hundred years, subject to cesser on redemption or charge by way of legal mortgage* (*k*).

Same date. 20th November, 1930. *Assent by them to the vesting of the settled land, subject to the term or legal charge, in Thomas Wilson in fee, without nominating Settled Land Act trustees* (*l*).

10th March, 1931. *Conveyance by Thomas Wilson and L. and M. to R. Horne in fee.*

(*g*) Ad. of E. A., 1925, ss. 23, 24; Jud. A., 1925, ss. 155, 162.

(*h*) No enrolment is required: s. 133, *sup.*

(*i*) See s. 8 (2), *sup.*; S. L. A., 1925, s. 16.

(*k*) See 5th Sch., Form No. 5, *sup.*; S. L. A., 1925, s. 16; Ad. of E. A., 1925, ss. 39, 40.

(*l*) S. L. A., 1925, s. 8 (7); Ad. of E. A., 1925, s. 36 (10). Assents must not be expressed to be made subject to equitable interests; if required, legal effect must be given thereto before the assent is made.

SPECIMEN No. 4.

OF THE TITLE OF THE ADMINISTRATORS OF M. CURTIS TO RICH AND MIDDLE FARMS.

RELATING TO INFANTS.

Will of James Wilcox devising Rich Farm and Middle Farm to the use of his elder son John Wilcox (an infant) for his life with remainders over for the issue of John Wilcox which failed with remainder to the use of his younger son Gilbert Wilcox (an infant) for his life with remainders over. Appointment of *X.* and *Y.* to be executors and Settled Land Act trustees.	2nd January, 1922.
Death of testator, leaving his two sons, giving dates of their births.	4th February, 1922.
Probate by X. and Y.	12th May, 1922.
Assent to the devise. John Wilcox being still an infant.	15th December, 1922.
The Settled Land Act, 1925, and The Law of Property Act, 1925, come into force and vest the settled land in *X.* and *Y.* as Settled Land Act trustees by reason of John Wilcox being an infant (*a*).	1st January, 1926.
Instrument declaring that the settled land is vested in X. and Y.	4th January, 1926.
Death of John Wilcox a bachelor and an infant.	3rd June, 1926.
Conveyance on sale of Rich Farm by X. and Y. to M. Curtis.	29th September, 1926.
Conveyance by X. and Y. vesting Middle Farm in Gilbert Wilcox (who had attained full age) on the trusts of the will of James Wilcox with a statement that they are the trustees of the settlement.	12th October, 1927.
Conveyance on sale of Middle Farm by Gilbert Wilcox to M. Curtis, X. and Y. joining to receive the purchase money.	10th November, 1927.

(*a*) S. L. A., 1925, 2nd Sch., para. 3 (vesting of infant's estates); the will becomes a trust instrument: *ib.*, para. 1 (1); there must be a vesting instrument as the executors have ceased to act as personal representatives: *ib.*, sub-para. (2); s. 26. By reason of the proviso to s. 110 (2) the will must be abstracted, although not placed in italics, unless the General Conditions of 1925 are applicable and counsel's certificate of title has been obtained, such certificate should be abstracted after the vesting instrument; in this case it will not be necessary to investigate the equities. Counsel's certificate.

1st February, 1928. Will of M. Curtis purporting to appoint his infant son John Curtis executor (*b*).

3rd April, 1928. Death of M. Curtis.

5th September, 1928. *Letters of administration with the will annexed granted to M. and N.*

[NOTE.—Administration will either be granted to a trust Corporation or to not less than two individuals, if there are Settled Land Act trustees, it will, as respects the settled land, be granted to them (*c*).]

SPECIMEN NO. 5.

OF THE TITLE OF GEORGE SMITH TO HOUSES IN JOHN STREET.

RELATING TO LEASEHOLD PROPERTY.

25th March, 1921. *Lease by Charles Robinson to Henry Chubb, of* 10 *to* 16 (*even numbers*) *John Street, in the city of X., for* 99 *years from date at a yearly rent of* 5*l. for each house.*

26th March, 1921. *First Mortgage* (*by sub-demise*) *by Henry Chubb to A. for the residue of the term less* 3 *days for securing* 3,000*l. and interest. Declaration by Henry Chubb that he holds the head term in trust for A. subject to redemption.*

Same date. *Second Mortgage* (*by sub-demise*) *to B. for the residue of the term less* 2 *days for securing* 1,000*l. and interest. Declaration by Henry Chubb that* (*subject to the First Mortgage*) *he holds the head term in trust for B. subject to redemption.*

Same date. Third Mortgage (by sub-demise) to *C.* for residue of term less 1 day for securing 500*l.* and interest (*a*).

Representation during a minority. (*b*) Probate will not be granted to an infant: Ad. of E. A., 1925, s. 20; Jud. A., 1925, s. 165; no interest vests in him as executor till probate is granted to him after he is of full age: *ib.*, sub-s. (2).

Number of representatives. (*c*) During a minority or the subsistence of a life interest representation will be granted to a trust corporation or to not less than two individuals: Ad. of E. A., 1925, s. 12; Jud. A., 1925, s. 160. Not more than four administrators will be appointed of the same property: *ib.*

Concurrent legal sub-terms. (*a*) Any number of legal sub-terms can be created out of the head term granted by the lease; the sub-terms may be all of the same duration, but when it is practicable the subsequent terms are generally longer than the preceding terms: s. 149 (5), *sup.*, and note thereto; 1st Sch., Pt. VII., para. 2, and Pt. VIII., paras. 2, 6 (b), *sup.*

Transfer of First Mortgage by A. to T. in trust for Henry Chubb, who pays off the First Mortgage debt. — 24th December, 1924.

The Law of Property Act, 1925, comes into operation. — 1st January, 1926.

[NOTE.—It extinguishes the first mortgage term, because Henry Chubb was not entitled to keep it alive to the prejudice of his mesne incumbrancers (*b*).]

Order of court directing Henry Chubb to hand over the Lease, First Mortgage, and Transfer of that Mortgage to *B.* — 1st July, 1926.

Assignment on sale by B., under his power, to George Smith. — 20th July, 1926.

[NOTE.—This conveys the head term created by the Lease and extinguishes all the mortgage terms. The head term may, if desired, be conveyed in the name of Henry Chubb (*c*).]

SEVENTH SCHEDULE.

Section 207

ENACTMENTS REPEALED.

Session and Chapter.	Title or Short Title.	Extent of Repeals.
27 Hen. 8, c. 10.	The Statute of Uses.	The whole Act (*d*).
32 Hen. 8, c. 34.	Graunties of reversions.	The whole Act (*e*).
13 Eliz. c. 5.	An Acte against fraudulent deedes, giftes, alienations, &c.	The whole Act (*f*).

(*b*) See ss. 5 (satisfied terms), 115 (3) and note thereto (where terms cannot be kept alive), 116 (cesser of term), and 1st Sch., Pt. II., para. 1, *sup.* (satisfied terms).

(*c*) See s. 89 (1), *sup.* For further epitomes relating to enfranchised land and perpetually renewable leaseholds: 1 Prid., 22nd ed., Ch. V.

(*d*) This repeal repeats L. P. (Amend.) A., 1924, 1st Sch. As to enactments substituted for the Statute of Uses, see ss. 1 (9) (directions to convey to uses), 4 (1) (interests formerly capable of being created under), 51 (possession without entry), 65 (reservations of legal estates), 66 (legal confirmation of titles), 72 (conveyance to self), 149 (2) (possession under terms without entry). — Statute of Uses, enactments substituted for.

(*e*) Replaced by s. 142, *sup.* (lessor's covenants).

(*f*) Replaced by s. 172, *sup.* (fraudulent conveyance).

Seventh Schedule—*continued.*

Session and Chapter.	Title or Short Title.	Extent of Repeals.
27 Eliz. c. 4.	An Act against covenous and fraudulent conveyances.	The whole Act (*d*).
29 Car. 2, c. 3.	The Statute of Frauds.	Sections one, two and three (*e*). In section four the words "or "upon any contract or sale "of lands, tenements or here- "ditaments or any interest in "or concerning them" (*f*). Sections seven, eight, nine (*g*), and twenty-four (*h*).
4 Will. & Mar. c. 16.	An Act to prevent frauds by clandestine mortgages.	The whole Act (*i*).
4 & 5 Anne, c. 3.	An Act for the amendment of the law and the better Advancement of Justice.	Sections nine and ten (*j*).
4 Geo. 2, c. 28.	The Landlord and Tenant Act, 1730.	Section six (*k*).
11 Geo. 2, c. 19.	The Distress for Rent Act, 1737.	Section eleven (*l*).
39 & 40 Geo. 3, c. 98.	The Accumulations Act, 1800.	The whole Act (*m*).
11 Geo. 4, and 1 Will. 4, c. 46.	The Illusory Appointments Act, 1830.	The whole Act (*n*).
3 & 4 Will. 4, c. 74.	The Fines and Recoveries Act, 1833.	Section thirty-two as respects settlements made or coming into operation after the commencement of this Act (*o*).

(*d*) Replaced by s. 173, *sup.* (voluntary conveyance).
(*e*) Replaced by ss. 53, 54, *sup.* (instruments in writing).
(*f*) Replaced by s. 40, *sup.* (contracts for sale, &c.).
(*g*) Replaced by s. 53, *sup.* (instruments in writing).
(*h*) S. 24 of the Stat. of Frauds (Pickering, s. 25) saves the husband's right to his intestate wife's estate; see now Ad. of E. A., 1925, s. 46.
(*i*) This Act is now obsolete; puisne mortgages must be registered under L. C. A., 1925, s. 10, Class C. (i), and equitable charges under *ib.*, Class C. (iii).
(*j*) Replaced by s. 151, *sup.* (attornments).
(*k*) Replaced by s. 150, *sup.* (surrenders).
(*l*) Replaced by s. 151 (2), *sup.* (attornments).
(*m*) Replaced by s. 164, *sup.* (accumulations).
(*n*) Replaced by s. 158, *sup.* (illusory appointments).
Special protectors. (*o*) This abolishes the power to appoint a special protector of the settlement for the purposes of disentailing assurances: L. P. A., 1922, s. 17 (5).

Seventh Schedule—*continued.*

Session and Chapter.	Title or Short Title.	Extent of Repeals.
1 & 2 Vict. c. 110.	The Judgments Act, 1838.	Section thirteen (*p*).
8 & 9 Vict. c. 106.	The Real Property Act, 1845.	Sections two, three (*q*), four (*r*), five (*s*), six (*t*), seven (*u*) and nine (*v*).
8 & 9 Vict. c. 112.	The Satisfied Terms Act, 1845.	The whole Act (*w*).
12 & 13 Vict. c. 26.	The Leases Act, 1849.	The whole Act (*x*).
12 & 13 Vict. c. 110.	An Act for suspending until the first day of June one thousand eight hundred and fifty, the operation of an Act passed this Session intituled an Act for granting relief against defects in leases under powers of leasing in certain cases.	The whole Act (*a*).
13 & 14 Vict. c. 17.	The Leases Act, 1850.	The whole Act (*b*).
15 & 16 Vict. c. 76.	The Common Law Procedure Act, 1852.	Section two hundred and nine (*c*).
17 & 18 Vict. c. 97.	The Inclosure Act, 1854.	The proviso to section eleven, and in section thirteen the words "so "far as the same has been "apportioned upon the lands of "persons interested and making "applications as aforesaid" (*d*).
18 & 19 Vict. c. 15.	The Judgments Act, 1855.	In section eleven the words "nor "shall any such judgment, "decree, order, or rule, or the "money thereby secured be a

(*p*) Replaced by s. 195, *sup.* (judgment debt charges).
(*q*) Replaced by ss. 51, 52, *sup.* (conveyances by deed).
(*r*) Replaced by s. 59, *sup.* (conditions; "grant").
(*s*) Replaced by s. 56, *sup.* (parties; indentures).
(*t*) Replaced by s. 4 (2), *sup.* (rights of entry).
(*u*) Replaced by s. 168, *sup.* (disclaimers; married women).
(*v*) Replaced by s. 139, *sup.* (reversions; surrender; merger).
(*w*) Replaced by s. 5, *sup.*; 1st Sch., Pt. II., para. 1 (satisfied terms).
(*x*) Replaced by s. 152, *sup.* (confirmation of leases).
(*a*) Obsolete: see s. 152, *sup.* (confirmation of leases).
(*b*) Replaced by s. 152, *sup.* (confirmation of leases).
(*c*) Replaced by s. 145, *sup.* (ejectment).
(*d*) Replaced by s. 192, *sup.* (apportionment of tithe).

Seventh Schedule—*continued.*

Session and Chapter.	Title or Short Title.	Extent of Repeals.
18 & 19 Vict. c. 15—*cont.*		"charge upon such lands tene- "ments or hereditaments so "vested in purchasers or mort- "gagees" (*e*).
22 & 23 Vict. c. 35.	The Law of Property Amendment Act, 1859.	Sections one, two (*f*), three (*g*), ten (*h*), eleven (*i*), twelve (*k*), twenty-one (*l*) and twenty-four (*m*).
23 & 24 Vict. c. 38.	The Law of Property Amendment Act, 1860.	Sections six (*n*) and eight (*o*).
31 & 32 Vict c. 4.	The Sales of Reversions Act, 1867.	The whole Act (*p*).
31 & 32 Vict. c. 40.	The Partition Act, 1868.	The whole Act without prejudice to proceedings commenced thereunder before the commencement of this Act (*q*).
34 & 35 Vict. c. 31.	The Trade Union Act, 1871.	In section seven the words "not "exceeding one acre" (*r*).
36 & 37 Vict. c. 66.	The Supreme Court of Judicature Act, 1873.	Subsections (3) to (7) of section twenty-five (*s*).
37 & 38 Vict. c. 37.	The Powers of Appointment Act, 1874.	The whole Act (*t*).
37 & 38 Vict. c. 78.	The Vendor and Purchaser Act, 1874.	The whole Act (*u*).
39 & 40 Vict. c. 17.	The Partition Act, 1876.	The whole Act without prejudice to proceedings commenced thereunder before the commencement of this Act (*q*).

(*e*) Replaced by s. 195 (3), *sup.* (judgment charge).
(*f*) Replaced by s. 143, *sup.* (licences to lessees).
(*g*) Replaced by s. 140, *sup.* (apportionment of conditions).
(*h*) Replaced by s. 70, *sup.* (rentcharge release).
(*i*) Replaced by s. 71, *sup.* (judgment release).
(*k*) Replaced by s. 159, *sup.* (execution of powers).
(*l*) Replaced by s. 72, *sup.* (assignment to self).
(*m*) Replaced by s. 183, *sup.* (concealment).
(*n*) Replaced by s. 148, *sup.* (waiver of covenant).
(*o*) Replaced by s. 183, *sup.* (concealment).
(*p*) Replaced by s. 174, *sup.* (reversions).
(*q*) For savings as to repeal of the Partition As., 1868 and 1876, see 1st Sch., Pt. IV., para. 1 (11), *sup.*
(*r*) This repeal enables trade unions to acquire land without limit: L. P. A., 1922, s. 106.
(*s*) For Jud. A., 1873, s. 25 (3), see s. 135, *sup.*; for *ib.*, sub-s. (4), see s. 185, *sup.*; for *ib.*, sub-s. (5), see s. 98, *sup.*; for *ib.*, sub-s. (6), see s. 136, *sup.*; and for *ib.*, sub-s. (7), see s. 41, *sup.*
(*t*) Replaced by s. 158, *sup.* (exclusive appointment).
(*u*) For V. & P. A., 1874, s. 1, see s. 44 (1), *sup.*; for *ib.*, s. 2, see ss. 44 and 45, *sup.*; and for *ib.*, s. 9, see s. 49, *sup.* The repeal does not extend to Ireland.

Seventh Schedule—*continued.*

Session and Chapter.	Title or Short Title.	Extent of Repeals.
44 & 45 Vict. c. 41.	The Conveyancing Act, 1881.	The whole Act, except section thirty so far as it relates to deaths occurring before the commencement of this Act, and except sections forty-two and forty-three so far as those sections relate to instruments coming into operation before the commencement of this Act (*a*) [and except section two], and except section forty-eight (*b*).
45 & 46 Vict. c. 39.	The Conveyancing Act, 1882.	The whole Act [except section two (*c*)].
55 & 56 Vict. c. 13.	The Conveyancing and Law of Property Act, 1892.	The whole Act.
55 & 56 Vict. c. 58.	The Accumulations Act, 1892.	The whole Act (*d*).
56 & 57 Vict. c. 21.	The Voluntary Conveyances Act, 1893.	The whole Act (*e*).
56 & 57 Vict. c. 53.	The Trustee Act, 1893.	Section forty-four (*f*).
57 Vict. c. 10.	The Trustee Act, 1893, Amendment Act, 1894.	Section three (*f*).
63 & 64 Vict. c. 26.	The Land Charges Act, 1900.	Subsections (1) & (2) of section two (*g*).
7 Edw. 7, c. 18.	The Married Women's Property Act, 1907.	Section one (*h*).

(*a*) As respects C. A., 1881, s. 30, see Ad. of E. A., 1925, ss. 1 and 3; as respects ss. 42 and 43, see S. L. A., 1925, s. 102 (management); T. A., 1925, s. 31 (maintenance); s. 42 is obsolete; s. 43 remains in force as to settlements made before 1926. The words in brackets have been misplaced by the King's Printer; they should come after the Act of 1882.

(*b*) C. A., 1881, s. 48, is repealed by Jud. A., 1925, 6th Sch., and is replaced by *ib.*, s. 219 (filing of powers of attorney).

(*c*) C. A., 1882, s. 2, is repealed by L. C. A., 1925, and is replaced by *ib.*, s. 17, as respects searches at the Land Registry. As respects searches in registries at the Central Office, see R. S. C., Ord. 61, r. 23; also Appendix No. 2, Pt. II., Vol. II.

(*d*) Replaced by s. 166, *sup.* (accumulations).

(*e*) Replaced by s. 173 (2), *sup.* (voluntary conveyances).

(*f*) Replaced by ss. 28, 92, *sup.*; S. L. A., 1925, s. 50; Ad. of E. A., 1925, s. 39; T. A., 1925, s. 12 (2) (minerals and surface).

(*g*) Replaced by s. 195 (3) and (4), *sup.* (judgments).

(*h*) Replaced by s. 170, *sup.* (married women's trust estates).

Seventh Schedule—*continued.*

Session and Chapter.	Title or Short Title.	Extent of Repeals.
1 & 2 Geo. 5, c. 37.	The Conveyancing Act, 1911.	The whole Act except sections eight (*i*) and fourteen (*k*) and except section twelve so far as it relates to deaths occurring before the commencement of this Act (*l*).
12 & 13 Geo. 5, c. 16.	The Law of Property Act, 1922.	The whole of Part I. except sections four and ten so far as they relate to settled land, section twelve, section thirteen so far as it relates to settled land, and sections fourteen, sixteen, twenty-six, and subsection (2) of section twenty-eight.
		The whole of Part III. except subsection (4) of section eighty-three; sections eighty-six and eighty-eight.
		Subsection (3) of section one hundred and thirteen.
		Subsection (5) of section one hundred and twenty-three.
		Subsection (10) of section one hundred and thirty-eight.
		Section one hundred and forty-six.
		Section one hundred and fifty-two.
		Subsection (13) of section one hundred and fifty-six.
		Last paragraph of subsection (1) of section one hundred and fifty-eight.
		The First Schedule except as respects Part II. so far as it relates to settled land.
		The Second Schedule.
		The Third Schedule except so far as it relates to settled land.
		The Fourth Schedule.
		Sub-paragraph (3) of paragraph one of the Fifth Schedule.
		The Sixth Schedule except paragraphs one and three and sub-paragraphs (1), (3) and the first paragraph of sub-paragraph (4)

(*i*) C. A., 1911, s. 8, replaced by T. A., 1925, s. 18, and repealed *ib.*, 2nd Sch. (devolution of powers).

(*k*) C. A., 1911, s. 14; replaced by S. L. A., 1925, s. 102; repealed *ib.*, 2nd Sch.

(*l*) C. A., 1911, s. 12; replaced by Ad. of E. A., 1925, s. 2 (2), as respects deaths after 1925.

Seventh Schedule—*continued.*

Session and Chapter.	Title or Short Title.	Extent of Repeals.
12 & 13 Geo. 5, c. 16—*cont.*		of paragraph four and sub-paragraphs (2) and (3) of paragraph five. The Eighth Schedule. In the Ninth Schedule, forms Nos. 5, 6, 7 and 9, and No. 8, except so far as it relates to settled land. The Eleventh Schedule. In the Fifteenth Schedule, sub-paragraph (3) of paragraph seven (*m*).
15 Geo. 5, c. 5.	The Law of Property (Amendment) Act, 1924.	Section three and the Third Schedule.

(*m*) The whole of the L. P. A., 1922, has been repealed by this and the other Consolidating Acts, save in regard to the parts relating to enfranchisement of copyholds, the extinguishment of manorial incidents, and the conversion of perpetually renewable leaseholds, which are printed *sup.*; also the provisions of s. 43 (power to sell in consideration of a rentcharge) are left unrepealed as respects glebe land, for it is proposed to deal with this matter by a Measure to be passed by the National Assembly of the Church of England.

Glebe land, sale at a rent.

CHAPTER VI.

THE LAND CHARGES ACT, 1925.

(15 Geo. 5, c. 22.)

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THE LAND CHARGES ACT, 1925.

15 GEO. 5, c. 22.

An Act to consolidate the enactments relating to the registration of pending actions, annuities, writs, orders, deeds of arrangement and land charges, and to searches.

[9th April, 1925.]

BE it enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

PRELIMINARY.

Registers at the land registry.

1.—(1) The registrar shall, subject as provided in this Act in regard to the register of annuities, continue to keep at the registry in the prescribed manner the following registers, namely—

(a) a register of pending actions;
(b) a register of annuities;
(c) a register of writs and orders affecting land;
(d) a register of deeds of arrangement affecting land; and
(e) a register of land charges.

Registration of land charges, &c. before 1926.

Under the L. C. A., 1888, provision was made for registration at the land registry of writs or orders affecting land (ss. 5, 6), deeds of arrangement (ss. 7 to 9), land charges (ss. 10 to 14); by an order of 3rd August, 1900, made pursuant to the L. C. A., 1900, registrations relating to English judgments pending actions, Crown debts, executions, and annuities were transferred on the 1st September, 1900, from the Central Office to the land registry. These Acts have been repealed by the Sch., *inf.*

Registration of land charges, &c. after 1925.

After 1925 the registers will still be kept at the land registry in the manner prescribed (s. 19, *inf.*) by the Rules: Appendix No. IX., Pt. I., Vol. II.; but annuities will not be registered in the register of annuities after 1925, though an annuity registered before 1926 may remain on the register until the entry is vacated: s. 4, *inf.*

Definitions.

The "registrar": s. 20 (10), *inf.*; "registry": *ib.*; "prescribed": *ib.*, sub-s. (9).

Separate rules: Appendix No. IX., Pt. IV., Vol. II., relating to local land charges are made under s. 15 (6), *inf.*

Effect of registration as regards notice

Registration under this Act of any instrument or matter gives actual notice of that instrument or matter, and of the fact of its registration, to all persons and for all purposes connected with the land affected, as from the date of registration or other prescribed date, and so long as the registration continues in force: L. P. A., 1925, s. 198; but without prejudice to the provisions of *ib.*, s. 94, respecting the protection of persons making further advances.

Why registration operates as notice.

Registration has been made to operate as notice in view of the large increase made in the number of legal estates (*e.g.*, most mortgages will be legal mortgages; mortgagors will have legal estates), for the right of an estate owner to convey free from equitable interests of which the purchaser does not have notice is preserved: L. P. A., 1925, ss. 1 (4), 2 (5).

Protection as respects the overreaching powers.

For the purposes of the overreaching powers it is not generally material whether or not a purchaser has notice (*ib.*, ss. 2 (1) (2), 9, 17, 28, 87—91, 99 104; S. L. A., 1925, s. 72; Ad. of E. A., 1925, ss. 36, 39), for in this case the necessary protection is afforded by the fact that at least two trustees for sale or a trust corporation (L. P. A., 1925, s. 27) or two S. L. A. trustees or a trust corporation (S. L. A., 1925, s. 94) are required to give receipts for capital. As to two personal representatives being required where an infant is entitled or there is a life interest: Ad. of E. A., 1925, s. 12, replaced by Jud. A., 1925, s. 160.

Restrictions on effect of notice.

A purchaser is not affected by notice, express or constructive, of any instrument or matter which is void or not enforceable against him by reason of it not being registered: L. P. A., 1925, ss. 199 (1) (i), 205 (1) (xvii); that is to say, provided there is no fraud on his part, he can ignore the fact of notice; see also as to constructive notice: *ib.*, s. 199 (1) (ii).

Purchaser's rights.

As to a purchaser's rights where an equitable interest is protected by registration: *ib.*, s. 43.

Effect of registration on distribution by trustees and personal representatives.

Trustees and personal representatives, distributing assets, are affected by actual notice of instruments or matters registered under this Act; the protection by means of advertisement given by T. A., 1925, s. 27, does not free them from the obligation to search: *ib.*, sub-s. (2) (b).

Where a trustee or personal representative has express or constructive notice of any interest in property to be distributed he is bound by such notice whether or not the matter is registered under this Act. But he is not affected by notice obtained when acting in another trust: T. A., 1925, s. 28.

Payment of income by trustees without searching.

Though trustees may be liable for ignoring a dealing affecting income when they have express or constructive notice thereof: *Cothay* v. *Sydenham*, 1788, 2 Bro. C. C. 391; *Leslie* v. *Baillie*, 1843, 2 Y. & Coll. C. C. 91; *Re Lord Southampton*, 1880, 16 Ch. D. 178; still having regard to L. P. A., 1925, s. 137 (notices of dealings with life interests), and to the fact that they are nearly always necessary parties to proceedings affecting equitable interests, they will, it is conceived, be safe in continuing to make payments without making any search under this Act.

(2) An alphabetical index, in the prescribed form, shall be kept at the registry of all entries made in any register kept at the registry pursuant to this Act.

Alphabetical index of entries.

This sub-s. replaces L. C. A., 1888, s. 15,

Searches will be against names.

Searches in the index.

Any person may search the Index on paying the prescribed fee: s. 16, *inf.*; for Fee Order see Appendix No. IX., Pt. II., Vol. II. In the first instance the Index should be searched, only when a material entry is found therein should a search be made in the register referred to. This should be borne in mind when advising on searches. The fees charged for official certificates of search are so small that, having regard to the protection given (s. 17, *inf.*), it will seldom, if ever, be expedient to make a personal search.

Advising on searches.

Official certificates.

(3) Every application to register shall be in the prescribed form and shall contain the prescribed particulars.

"Prescribed forms" of application.

For the prescribed forms of application applicable to the different cases, see the Sch. to the L. C. R., 1925, in Appendix No. IX. to Vol. II.

Particulars to be furnished; plan when required.

The particulars to be furnished in the case of any land charge should be ample to identify the land affected. It is worth while for the applicant to furnish a plan. The duties of the registrar are ministerial, whatever is laid before him he will register subject to any prescribed evidence being furnished and to the payment of the fee. It is for the applicant to see that the registration will protect him.

Part I.

Pending Actions.

Register of pending actions.

2.—(1) A pending action, that is to say, any action, information or proceeding pending in court relating to land or any interest in or charge on land, and a petition in bankruptcy filed after the commencement of this Act, may be registered in the register of pending actions.

This s. reproduces, with amendments, the Judgments A., 1839, s. 7, repealed by Sched., *inf.*

As to "land": s. 20 (6), *inf.*

Wide extension of the definition of pending actions.

By this s. not only petitions in bankruptcy (whether or not they relate to land) are added to the number of judicial proceedings which may be registered as pending actions, but the s. covers actions or proceedings "relating to" legal or equitable interests in land, or legal or equitable charges on land. Thus a summons relating to the appointment or removal of a trustee, or for ascertaining the construction of a document or for administration, &c., provided that it relates to land, may be registered.

Doctrine of pending actions.

Before 1926 the doctrine of pending actions had no relation to notice, it rested on the necessary assumption that it is impossible that any proceedings can be brought to a successful conclusion if dispositions made while the proceedings are pending are allowed to prevail: *Bellamy* v. *Sabine*, 1857, 1 De G. & J. 566; but see now L. P. A., 1925, s. 198.

Independently of the effect of notice under s. 198, the effect of the registration ceases after the judgment or order is made, and further registration under s. 6 (as a writ, &c.) or under s. 10 (as a land charge) may be required save so far as s. 21 applies.

Power to order vacation.

As to the power to vacate the registration of a pending action, during the pendency, or upon the determination of any proceedings, see sub-s. (6), *inf.*

Purchaser, how affected.

Independently of the effect of notice, a purchaser is only bound by rights ascertained in the proceedings affecting the interest or charge which he acquires: *Kinsman* v. *K.*, 1831, 1 Russ. & M. 617; *Bellamy* v. *Sabine*, 1857, 1 De G. & J. 566. He takes subject to the effect of any order or judgment which may be made.

S. does not apply to personal property.

Apart from petitions in bankruptcy, the s. does not apply to personal property, other than chattels real: *Wigram* v. *Buckley*, 1894, 3 Ch. 483; though it applies to charges affecting land.

Renewal of registration.

The registration of a pending action must be renewed every five years: sub-s. 8, *inf.*

Registered land.

Pending actions in respect of registered land will not be registered under this s. if they can be protected under the L. R. A., 1925, s. 59, by lodging or registering a creditor's notice (s. 61), restriction, caution, inhibition or other notice: s. 23 (1), *inf.*

The registrar is under no obligation to ascertain whether or not a pending action affects registered land: s. 23 (2), *inf.*

Where an interest is capable of being registered under two or more parts of this Act it is sufficient for it to be registered under any one part of the Act: s. 21, *inf.* Effect of registration under any part of the Act.

Where an interest has been protected by registration of a pending action under any of the Acts repealed by this Act, the registration has effect as if made under this Act: s. 24, *inf.*; the old rules have been rescinded. Effect of repeals by this Act.

As to searches for pending actions: ss. 16 and 17, *inf.* Searches.

An action by a mortgagee for foreclosure may be registered as a pending action, so may an action for redemption, for these are actions relating to charges on land. Foreclosure and redemption actions.

Personal representatives can make a good title to the freehold and leasehold property of a deceased person, notwithstanding that an administration action has been commenced before the sale, provided that judgment ordering a sale by the court has not been made or a receiver appointed or an injunction to restrain a sale granted: *Price* v. *P.*, 1887, 35 Ch. D. 297; but the purchaser will after 1925 obtain notice of the registered pending action. Effect of an administration action on power of disposition.

Independently of the new law an action by a creditor for administration did not of itself suspend the right of personal representatives to dispose of the land, for the purchaser, not being bound to see to the application of the purchase-money, was entitled to assume that it would be applied in payment of debts: *Berry* v. *Gibbons,* 1873, L. R. 8 Ch. 747. Creditor's action for administration.

But after 1925, or, where L. T. A., 1897, Pt. I., applied, after 1897 the legal estate vests in the personal representatives, and a purchaser will require it to be conveyed or vested in him: L. P. A., 1925, s. 42. Hence a creditor will not be able to make title, save in right of a legal mortgage, or under an equitable charge, and in the latter case with the aid of an order under *ib.*, ss. 90 or 91; or, independently of a charge, under an order in an administration action: cf. s. 9; the application will be made under Ad. of E. A., 1925, ss. 32 (1), 38 (2).

A specific devisee or legatee cannot after 1925 make a title to the land until he obtains an assent under Ad. of E. A., 1925, s. 36, or a vesting order under *ib.*, s. 43 (2); but even after such an assent or order is obtained, the court has power to order a sale or other transaction: *ib.*, s. 38 (2); an application for this purpose should be registered as a pending action against the devisee or legatee. His right to commence an action for administration is not affected; his right to administration with the will annexed is expressly saved: *ib.*, s. 10, replaced by Jud. A., 1925, s. 162. See also the Non-Contentious Probate Rules, 1925, in Appendix No. X. of Vol. II. His right to dispose of his beneficial interest is also saved: Ad. of E. A., 1925, s. 32 (2); but for the benefit of creditors he is liable to account for the value of the interest disposed of: *ib.* Rights of a specific devisee or legatee.

After 1925 there will be no need for a testator to charge his land with the payment of debts, all the real and personal estate are assets for this purpose: Ad. of E. A., 1925, s. 32; the persons to make title will be the personal representatives, not the devisee or legatee of the land charged. Land charged with debts.

Under the old law a general claim by a creditor for administration of a testator's real and personal estate was not a sufficient indication of intention to render liable the specifically devised real estate: *Price* v. *P.*, 1887, 35 Ch. D. 297.

If an action for the execution of the trusts of a deed or will is registered as a pending action the trustees or executors can act in the exercise of their powers up to the date of the order, but thereafter must act under the direction of the court: *Cafe* v. *Bent,* 1843, 3 Hare, 245. Effect of order for the execution of trusts.

The powers of disposition conferred by the S. L. A., 1925, on tenants for life and statutory owners are not affected merely by an order for the execution of the trusts of the settlement: *Hampden* v. *E. of Buckinghamshire,* 1893, 2 Ch. 531; an application to restrain a dealing would be on a different Powers of a tenant for life not affected.

footing; a tenant for life cannot act till a vesting assent or vesting deed has been executed: *ib.*, s. 13.

Registration of a petition in bankruptcy as a pending action.

A petition in bankruptcy may be registered as a pending action if it is filed after 1925. Where the petition is filed against a firm the application to register the pending action must contain the names and addresses of the partners and the registration will then be effective against each partner as well as the firm: sub-s. (4), *inf.* Where the application to register the action is made by the registrar of the court in which the petition is filed, no fee will be charged for registration: sub-s. (5), *inf.*

Petition in bankruptcy.

The registration of a petition in bankruptcy protects the title of the trustee before the receiving order is registered; the registration operates as notice, but even without such registration this Act does not directly affect the title of the trustee where the conveyance to the purchaser is made before the pending action is registered: s. 3 (3), *inf.*; in this case the purchaser only obtains a good title if the conveyance is made before the receiving order and he has no notice of an available act of bankruptcy: Bkcy. A., 1914, s. 45.

Filing of a petition in bankruptcy.

Where a legal estate is transferred or created after 1925, a petition in bankruptcy filed after 1925 is not notice of the bankruptcy or of any act mentioned in the petition unless it is registered as a pending action: s. 3 (2), *inf.*; to the extent to which this reduces the possibility of notice it enlarges the possible operation of s. 45 of the Act of 1914 in favour of a purchaser.

(2) Subject to general rules, every application to register a pending action shall contain particulars of—

(a) the name, address, and description of the estate owner or other person whose estate or interest is intended to be affected thereby; and

(b) the court in which the action, information or proceeding was commenced or filed; and

(c) the title of the action, information or proceeding; and

(d) the day when the action, information or proceeding was commenced or filed.

General rules.

For the L. C. R., 1925, see Appendix No. IX., Vol. II.

When initials are sufficient entry of christian names.

If the surname of the person whose estate or interest is affected by the registration is entered in full, his initials will be a sufficient entry of his christian names: *Dunn* v. *Chapman*, 1920, 2 Ch. 474.

In absence of a title, trade or profession need not be stated.

Where such person has no title, trade, or profession this need not be stated in the form of application: *S. C.*

"Estate owner or other person."

"Estate owner": s. 20 (4), *inf.*; L. P. A., 1925, s. 1; "or other person," *e.g.* a remainderman, he may subsequently become an estate owner.

Comparison between this sub-s. and the Judgments A., 1839, s. 7.

The particulars required are the same as those prescribed by the Judgments A., 1839, s. 7, save that this sub-s. speaks of "commenced" as well as "filed."

(3) The registrar shall forthwith enter the particulars in the register, in the name of the estate owner or other person whose estate or interest is intended to be affected.

Comparison between this sub-s. and the judgments A 1839, s. 7.

The directions are the same as those contained in the Judgments A., 1839, s. 7, now repealed, save that the words "estate owner" are new.

Registration against the name of an "estate owner" will not necessarily affect his over-reaching powers: s. 22 (1), *inf.*; for these can operate notwithstanding notice: L. P. A., 1925, s. 2 (1) (2); S. L. A., 1925, s. 72; in some cases notice is material: L. P. A., 1925, s. 2 (5). But the registration of a pending action may do more than give notice, see note to sub-s. (1), *sup.*

Registration against estate owners.

The registration of a pending action against a person entitled to an equitable interest in or charge on land may affect dealings with the interest or charge by reason merely of giving notice; that person may subsequently become an estate owner.

Registration against a person entitled to an equitable interest.

(4) In the case of a petition in bankruptcy filed against a firm, the application to register the pending action shall state the names and addresses of the partners, and the registration shall be effected against each partner as well as against the firm.

This sub-s. is new. It enables the creditors of a firm to protect their rights against individual members of the firm. And see Registration of Business Names A., 1916.

Registration of bankruptcy petition against a firm.

Bankruptcy proceedings against a firm may be taken in the firm name: Bkcy. A., 1914, s. 119; but the receiving order will operate as if made against each partner individually: Bkcy. R., 1915, r. 285; the adjudication is made against each of the partners individually: *ib.*, r. 288.

Rights of creditors against partners.

(5) No fee shall be charged for the registration of a petition in bankruptcy as a pending action if the application therefor is made by the registrar of the court in which the petition is filed.

For Fee Order, see Appendix No. IX., Pt. II., Vol. II.

Registration fees.

(6) The court, if it thinks fit, may, upon the determination of the proceedings, or during the pendency thereof if satisfied that the proceedings are not prosecuted in good faith, make an order vacating the registration of the pending action, and direct the party on whose behalf the registration was made to pay all or any of the costs and expenses occasioned by the registration and vacating thereof.

This reproduces the Lis Pendens A., 1867, s. 2 (part), see also *Baxter* v. *Middleton*, 1898, 1 Ch. 313; *Reilly* v. *Richardson*, 1899, 43 Sol. J. 457; *King* v. *Barber*, 1902, 47 Sol. J. 110. Before 15th July, 1867, a pending action could only be vacated with the consent of the person by whom it was registered.

Vacating registration of pending action by the court.

(7) When an office copy of an order of discharge or an acknowledgment of satisfaction in the prescribed form is lodged with the registrar, he may enter discharge or satisfaction of the registered pending action to which

it refers, and may issue a certificate in the prescribed form of such discharge or satisfaction.

Discharge or satisfaction of a pending action.

This reproduces the Crown Debts and Judgments A., 1860, s. 2, and the Lis Pendens A., 1867, s. 2, as respects the discharge or satisfaction of a pending action.

Prescribed forms.

For prescribed forms, see Sch. to L. C. R., 1925, in Appendix No. IX., Pt. I., in Vol. II.

(8) The registration of a pending action shall cease to have effect at the expiration of five years from the date of registration, but may be renewed from time to time, and, if renewed, shall have effect for five years from the date of renewal.

Re-registration of pending actions.

This sub-s. reproduces the Judgments A., 1839, s. 4, repealed *inf.*

Extent to which purchasers are bound.

A purchaser who was bound by the first registration will be bound by any subsequent registration, whether or not there has been an interval between the periods of registration; but a purchaser who takes an interest during an interval when no registration is in force is not bound by the re-registration: *Shaw* v. *Neale*, 1858, 6 H. L. C. 581.

Searches.

By reason of this sub-s. and the next s. it is unnecessary for a purchaser to search for more than five years.

Protection of purchasers against unregistered pending actions.

3.—(1) A pending action shall not bind a purchaser without express notice thereof unless it is for the time being registered pursuant to this Part of this Act:

Provided that as respects a petition in bankruptcy, this subsection only applies in favour of a purchaser of a legal estate in good faith, for money or money's worth, without notice of an available act of bankruptcy.

This s. reproduces the Judgments A., 1839, s. 7, with amendments.

"Purchaser."

"Purchaser" includes a mortgagee or a lessee: s. 20 (8), *inf.*

Constructive notice.

The doctrine of constructive notice does not apply to any matter capable of being registered under this Act: L. P. A., 1925, s. 199 (1) (i).

Actual notice.

Registration under this Act of any instrument or matter constitutes actual notice thereof: L. P. A., 1925, s. 198 (1), also note to s. 1 (1), *sup.*

"Express notice."

Express notice means actual notice independently of notice obtained by reason of the registration.

"Without notice."

The proviso is new; "without notice" means without express notice; the mere filing of the petition does not, as respects dealings with legal estates, give notice: next sub-s.

Registered land.

Notice of pending actions will appear on the register of title: L. R. A., 1925, ss. 59, 61. Pending actions need not be registered under this Act in respect of registered land so far as they can be protected by the registration of creditors' notices, cautions and inhibitions: s. 23 (1), *inf.*

(2) As respects any transfer or creation of a legal estate, a petition in bankruptcy filed after the commencement of this Act, which is not for the time being

registered as a pending action, shall not be notice or evidence of any act of bankruptcy therein alleged.

This sub-s. renders it expedient to register the petition as a pending action, but see next sub-s.

Filing of petition not notice of available act of bankruptcy.

(3) The title of a trustee in bankruptcy acquired after the commencement of this Act shall be void as against a purchaser of a legal estate in good faith for money or money's worth without notice of an available act of bankruptcy claiming under a conveyance made after the date of registration of the petition in bankruptcy as a pending action, unless, at the date of the conveyance, either the registration of the pending action is in force, or the receiving order is registered pursuant to Part III. of this Act.

Title of trustee in bankruptcy: relation back.

Under the Bkcy. A., 1914, the title of the trustee in bankruptcy relates back to the act of bankruptcy on which the petition was founded or, where the bankrupt is proved to have committed more than one act of bankruptcy, to the first act of bankruptcy proved to have been committed within three months before the date when the petition was presented: Bkcy. A., 1914, s. 37.

"Acquired."

It is conceived that "acquired" refers to the date of a receiving order made after 1925 and not to the available act of bankruptcy, thus the trustee or the registrar of the court can register a pending action though the act of bankruptcy occurred before 1926.

"In good faith."

A purchaser (s. 20 (8), *inf.*) is "a purchaser in good faith" if he acts in good faith, though the grantor may not do so: *Mackintosh* v. *Pogose*, 1895, 1 Ch. 505; "legal estate": s. 20 (4), *inf.*; "without notice," *i.e.*, express notice, see note to sub-s. (2), *sup.*

"Available act of bankruptcy."

As to "act of bankruptcy": Bkcy. A., 1914, s. 1, Williams' Bkcy., 13th ed., 1—39; as to what acts "are available": Bkcy. A., 1914, s. 167. A petition cannot be founded on an act of bankruptcy committed more than three months before the date of presentation of the petition: Bkcy. A., 1914, s. 4; filing is not notice: sub-s. (2), *sup.*

"Claiming under a conveyance."

It is impossible to give a purchaser further protection before the date of registration of the pending action than is afforded by Bkcy. A., 1914, s. 45, without leaving a period within which frauds on creditors would be facilitated, hence this sub-s. does not protect a purchaser before a pending action has been registered. If, however, the pending action lapses (s. 2 (8), *sup.*) or is vacated (s. 2 (6), *sup.*) the purchaser will be safe unless the receiving order has been registered under s. 6, *inf.* For "conveyance": s. 20 (1), *inf.*

Under Bkcy. A., 1914, s. 45 (the operation of which is enlarged by sub-s. 2, *sup.*, as respects notice), the purchaser obtains a good title if the conveyance is made before the receiving order and he has no notice of an available act of bankruptcy.

Purchasers not deriving title directly under the bankrupt.

As to purchasers for money's worth from a donee (not for value) claiming under a bankrupt: *Re Brall*, 1893, 2 Q. B. 381 (notice of voluntary settlement does not defeat the title); *Re Hart*, 1912, 3 K. B. 6 (conveyance without notice of act of bankruptcy valid); *Re Gunsbourg*, 1920, 2 K. B. 426 (act of bankruptcy before date of voluntary settlement avoids the conveyance). *Semble*, for the purposes of protection under this Act it is immaterial

whether the purchaser for money's worth derives title directly or indirectly from the bankrupt.

Object of the bankruptcy provisions.

The main object of the bankruptcy provisions is to provide means for a search in bankruptcy which will afford reasonable protection to an intending purchaser for money's worth.

Part II.

Annuities.

Register of annuities.

4.—(1) No annuity shall be entered in the register of annuities after the commencement of this Act.

Cesser of registration annuities.

For definition of "annuity": sub-s. 5, *inf.*

Subsequent registration of annuities.

An annuity created after 1925 may be registered as a general equitable charge under s. 10, Class C. (iii), *inf.*; see s. 5, *inf.*, as to those created before 1926, and s. 10, Class E.

Unregistered annuities void against purchasers and creditors.

After 1925 an annuity, created before 1926, which is not registered either as an annuity or as a land charge, is void against a creditor or a purchaser: s. 5.

Old law.

Before 1926 an unregistered annuity was good against creditors, with or without notice, but was only good against purchasers with notice: *Greaves* v. *Tofield*, 1880, 14 Ch. D. 563.

Power of tenants for life, &c. to overreach annuities whether registered or not.

The fact that (s. 22 (1), *inf.*) an annuity, whether registered or not, may be overreached on a sale or other disposition under the L. P. A., 1925, s. 2 (3) (v) and S. L. A., 1925, s. 72 (3) will not prejudice the interests of the annuitant as the charge immediately attaches to the capital arising from the transaction. After 1925 the capital must be paid to a trust corporation or to not less than two trustees for sale or S. L. A. trustees: L. P. A., 1925, s. 27; S. L. A., 1925, ss. 72 (3), 94.

Power of trustees for sale and personal representatives to overreach annuities.

Trustees for sale (L. P. A., 1925, s. 28) and personal representatives (Ad. of E. A., 1925, s. 39 (1) (ii)) have the same overreaching powers as tenants for life. As to the number of personal representatives: Jud. A., 1925, s. 160, replacing Ad. of E. A., 1925, s. 12.

Power of an absolute owner to overreach annuities.

Where the legal estate affected is not subject to a settlement or a trust for sale the estate owner may, by subjecting his estate to a settlement (S. L. A., 1925, s. 21) or a trust for sale (L. P. A., 1925, s. 2 (2)), overreach the annuity.

(2) An annuity registered before the commencement of this Act in the register of annuities may remain registered until the entry is vacated in the prescribed manner, on the prescribed evidence as to satisfaction, cesser or discharge being furnished.

Effect of registration before 1926.

Registration of an annuity before 1926 has the same effect as if it were registered under this Act: ss. 5 and 24, *inf.*

Prescribed manner of vacating register.

For the prescribed manner of vacating the register and the prescribed evidence of satisfaction, cesser, or discharge, see Appendix No. IX., Pt. I., in Vol. II.

(3) When an acknowledgment in the prescribed form of satisfaction, cesser or discharge is lodged with the registrar, he may enter satisfaction, cesser or discharge

of the registered annuity to which it refers, and may issue a certificate in the prescribed form of such satisfaction, cesser or discharge.

For prescribed forms: Appendix No. IX., Pt. I., Vol. II.

Certificate of satisfaction, cesser or discharge.

(4) The register of annuities shall be closed when all the entries therein have been vacated, or the prescribed evidence of the satisfaction, cesser or discharge of all the annuities has been furnished.

This register will no longer be required when the entries at present therein have been vacated, as no annuity can be registered therein after 1925: subs. (1), *sup.*

Closing of register of annuities.

(5) In this Part of this Act the expression "annuity" means a rentcharge or an annuity for one or more life or lives, or for any term of years or greater estate determinable on one or more life or lives created after the twenty-fifth day of April, eighteen hundred and fifty-five, and before the commencement of this Act, and not being a rentcharge or an annuity created by a marriage settlement or will.

This replaces the definition of an annuity in the Judgments A., 1855, ss. 12 and 14. The annuities so defined are all equitable interests, for they depend on the dropping of lives: L. P. A., 1925, s. 1; 1st Sch., Pt. I.; this Act only relates to charges, &c. on land, see next s.

Definition of annuity.

When not created for money's worth they are protected by the provisions requiring capital money to be paid to a trust corporation or to at least two trustees.

"Not created by a marriage settlement or will."

5. An annuity which before the commencement of this Act was capable of being registered in the register of annuities shall be void as against a creditor or a purchaser of any interest in the land charged therewith unless the annuity is for the time being registered in the register of annuities or in the register of land charges as hereinafter provided.

Protection of purchasers, &c. against unregistered annuities.

This reproduces Judgments A., 1855, s. 12.

Before 1926 annuities were seldom registered, for they were good against subsequent creditors of the person granting the annuity whether or not the creditor had notice, also they were good against a purchaser with notice: *Greaves* v. *Tofield,* 1880, 14 Ch. D. 563.

Effect of an unregistered annuity before 1926.

All "annuities" created before 1926 and not registered should be registered under s. 10, Class E., as land charges, for a purchaser is not affected by notice of a matter which ought to have been registered under this Act or an enactment replaced by this Act: L. P. A., 1925, s. 119 (1) (i).

Annuities created before 1926 should be registered on 1st January, 1926.

Part III.

Writs and Orders affecting Land.

Register of writs and orders affecting land.

6.—(1) There may be registered in the register of writs and orders—

(a) any writ or order affecting land issued or made by any court for the purpose of enforcing a judgment, statute or recognizance, whether obtained on behalf of the Crown or otherwise, or for the purpose of enforcing any inquisition finding a debt due to the Crown, or any obligation or specialty made to the Crown;

(b) any order appointing a receiver or sequestrator of land;

(c) any receiving order in bankruptcy made after the commencement of this Act, whether or not it is known to affect land.

Notice.

This sub-s. reproduces the effect of L. C. A., 1888, s. 5 (1), and L. C. A., 1900, s. 2, as brought into operation by the L. C. A., 1900, Order of the 3rd August, 1900, save that para. (c) is new. The registration of the writ or order operates as notice: L. P. A., 1925, s. 198.

"Judgment": s. 20 (5), *inf.*; "court": *ib.*, sub-s. (2).

Registration under more than one part of the Act.

Where the proceeding in which the writ or order is issued remains registered as a pending action that will still be valid as respects notice: s. 21, *inf.*, though to create a charge on the land the writ or order must be registered under this s., see L. P. A., 1925, s. 195 (3).

Charge on land.

As to recognizances and inquisitions: *ib.*, sub-s. (4). The land is bound by the registration whether or not extendible by legal or equitable execution: *Ashburton* v. *Nocton*, 1915, 1 Ch. 274.

Registered land.

In the case of registered land a writ or order will not be registered under this s. if the interest can be protected under ss. 59 or 61 of the L. R. A., 1925, see s. 23, *inf.*

Orders having the effect of a judgment.

An order having the effect of a judgment (s. 20 (5), *inf.*) is an order capable of being enforced as though it were a judgment to the same effect: R. S. C. Order 42, r. 24.

Where an order can be enforced by execution it is an abuse of process to proceed by action: *Pritchett* v. *English & Colonial Syndicate*, 1899, 2 Q. B. 428 (action on garnishee order, an action for debt will lie on a garnishee order).

An order for payment against a debtor operates for the purpose of serving a bankruptcy notice as a final judgment: Bkcy. A., 1914, s. 1 (g), overruling *Ex p. Chinery*, 1884, 12 Q. B. D. 342.

An order not having the effect of a judgment may be protected by registration of a pending action, if the proceedings affect land or any interest in or charge on land.

Orders not being judgments.

For instances of orders that are not judgments, see *Onslow* v. *I. R. C.*, 1890, 25 Q. B. D. 465 (case stated on Stamp A., 1870, s. 19); *Joynt* v. *MacCabe*, 1899, 1 Ir. R. 104 (consent order staying proceedings).

Orders which should be registered.

The following orders should, for instance, be registered under this Act, namely, orders under the L. P. A., 1925, s. 90 (realisation of equitable

charges); *ib.*, s. 91 (orders for sale in an action for redemption or foreclosure); orders directing dealings with land under Ad. of E. A., 1925, s. 38 (2), when operating as a judgment.

As to the effect of non-registration of a receiving order: s. 7, *inf.*; it was necessary to authorise the registration "whether or not it is known to affect land" as the assets of the bankrupt would not necessarily be ascertained, but it is only material as respects land. Receiving orders.

(2) Every entry made pursuant to this section shall be made in the name of the estate owner or other person whose land, if any, is affected by the writ or order registered.

This sub-s. replaces the L. C. A., 1888, s. 5 (2).

"Estate owner": s. 20 (4), *inf.*; compare note to s. 2 (3), *sup.* In the case of receiving orders the entry will be made against the name of the bankrupt, see s. 19 (2), *inf.*, and Bankruptcy Rules in Appendix No. IX., Pt. III., Vol. II. Registration against names.

(3) The registration of a writ or order in the said register ceases to have effect at the expiration of five years from the date of registration, but may be renewed from time to time, and, if renewed, shall have effect for five years from the date of renewal.

This replaces the L. C. A., 1888, s. 5 (3). Re-registration.

This sub-s. taken with s. 7, *inf.*, makes it unnecessary for a purchaser to search for writs and orders for more than five years. Effect on searches.

(4) No fee shall be charged for the registration of a receiving order in bankruptcy if the application therefor is made by an official receiver.

As to the fees which may be charged by the registrar for the registration of other entries: Appendix No. IX., Pt. II., Vol. II. Registration fees.

(5) The registration of a writ or order affecting land may be vacated pursuant to an order of the court or a judge thereof.

This sub-s. is new. "Or a judge thereof": the order may be made in chambers. Vacating writ or order.

(6) When an office copy of an order for discharge, or an acknowledgment of satisfaction in the prescribed form, is lodged with the registrar, he may enter discharge or satisfaction of the registered writ or order to which it refers, and may issue a certificate in the prescribed form of such discharge or satisfaction.

For prescribed forms: Appendix No. IX., Pt. I., Vol. II. Acknowledgment of satisfaction.

Protection of purchasers against unregistered writs and orders.

7.—(1) Every such writ and order as is mentioned in the last preceding section, and every delivery in execution or other proceeding taken pursuant to any such writ or order, or in obedience thereto, shall be void as against a purchaser of the land unless the writ or order is for the time being registered pursuant to this Part of this Act:

Provided that as respects a receiving order in bankruptcy, this subsection only applies in favour of a purchaser of a legal estate in good faith, for money or money's worth, without notice of an available act of bankruptcy.

"Purchaser" in relation to trustee in bankruptcy.

Effect of non-registration.

Save for the proviso this sub-s. reproduces the L. C. A., 1888, s. 6. The proviso confining the meaning of purchaser is required on account of s. 20 (8). *inf.* The Act has two objects, first to protect interests which are duly registered, and secondly to protect purchasers against claims which ought to be registered. It only nullifies the claim as respects a purchaser, it differs in its effect from an overreaching provision, for it does not shift the claim to the proceeds. Subject to sub-s. (2), *inf.*, as regards a receiving order, a purchaser is not affected by notice of a matter which ought to be registered under this Act: L. P. A., 1925, s. 199 (1) (i).

"Notice."

"Available act."

As to "notice" and "available act," see notes to s. 3 (1) (3), *sup.*

(2) The title of a trustee in bankruptcy acquired after the commencement of this Act shall be void as against a purchaser of a legal estate in good faith for money or money's worth without notice of an available act of bankruptcy, claiming under a conveyance made after the date of registration of the petition in bankruptcy as a pending action unless, at the date of the conveyance, either the registration of the pending action is in force or the receiving order is registered pursuant to this Part of this Act.

Avoidance of title of trustee in bankruptcy after date of registration of a pending action.

See note to s. 3 (3), *sup.*, which this sub-s. repeats in relation to writs and orders.

Bankruptcy searches.

Before 1926 a full search in bankruptcy or in Stubb's Gazette for receiving orders extended over twelve years, though in practice the search was made for five years. As regards receiving orders made after 1925, the search will be for writs and orders for five years.

Part IV.

Deeds of Arrangement.

Register of deeds of arrangement affecting land.

8.—(1) A deed of arrangement affecting land may be registered in the register of deeds of arrangement affecting land, in the name of the debtor.

This sub-s., which only applies where the deed affects "land" (s. 20 (6), *inf.*), reproduces the L. C. A., 1888, s. 7. The registration does not take

the place of general registration under D. of Arr. A., 1914, s. 4, at the Board of Trade: Ad. of Justice A., 1925, s. 22.

"Deed of arrangement": see s. 20 (3), *inf.*; and D. of Arr. A., 1914, s. 1. "Deed of arrangement."

Arrangements with certain specified creditors with no option for the other creditors to come in are not deeds of arrangement within the Act: *Re Saumarez*, 1907, 2 K. B. 170; *cf. Re Allix*, 1914, 2 K. B. 77, unless they are made by a debtor, who was insolvent at the date of the execution, for the benefit of three or more creditors: D. of Arr. A., 1914, s. 1 (1) (b).

This s. does not apply to arrangements made by limited companies: *Re Riley's, Ld.*, 1903, 2 Ch. 590.

Failure to register a deed under the Act of 1914, s. 4, renders it absolutely void, but failure to register it under this Act only renders it void against a purchaser of land affected by it: s. 9, *inf.* Failure to register under Act of 1914.

A deed of arrangement which is capable of being registered under this Act need not (s. 18, *inf.*) be registered under the Middlesex Registry A., 1708, but this exemption does not apply to Yorkshire registers. Middlesex Registry.

Deeds of arrangement relating to registered land need not be registered under this Act: s. 23, *inf.*, see also L. R. A., 1925, s. 59. Registered land.

As to searches in this register see ss. 16 and 17, *inf.*, they should till 1927 extend back to 1st January, 1889, but after 1926 a five years' search will be sufficient: sub-s. (4), *inf.* Searches.

(2) The registration may be made on the application of a trustee of the deed, or of a creditor assenting to or taking the benefit of the deed.

This sub-s. replaces part of the L. C. A., 1888, s. 8. Applicants for registration.

As to what amounts to assent: *Re Michael*, 1891, 8 Mor. 305; *Re Hawley*, 1897, 4 Mans. 41; *Re Woodroff*, 1897, 4 Mans. 46; *Re Carr*, 1902, 85 L. T. 552; *Re Day*, 1902, 86 L. T. 238; *Re Brindley*, 1906, 1 K. B. 377; *Re Mills*, 1906, 1 K. B. 389; *Re Sunderland*, 1911, 2 K. B. 658; *Re Beesley*, 1914, 109 L. T. 910. The person who alleges assent must prove it: *Re Michael, sup.* Assenting creditor.

(3) The registration may be vacated pursuant to an order of the court or a judge thereof.

This sub-s. replaces part of the L. C. A., 1888, s. 8, the order may be made in chambers. Vacation of registration.

(4) The registration of a deed of arrangement in the said register shall cease to have effect at the expiration of five years from the date of registration, but may be renewed from time to time, and if renewed shall have effect for five years from the date of renewal:

Provided that nothing in this sub-section shall affect any registration made under any enactment replaced by this Act until the expiration of one year from the commencement of this Act.

This sub-s. is new; see note to sub-s. (1), *sup.* After 31st December, 1926, a purchaser need not search the register for more than five years. Re-registration.

Protection of purchasers against unregistered deeds of arrangement.

9. Every deed of arrangement, whether made before or after the commencement of this Act, shall be void as against a purchaser of any land comprised therein or affected thereby unless the deed is for the time being registered pursuant to this Part of this Act.

This s. reproduces the L. C. A., 1888, s. 9.

"Purchaser." "Purchaser" includes a mortgagee or lessee: s. 20 (8), *inf.* It is not material that he has notice: L. P. A., 1925, s. 199 (1) (i).

Part V.

Land Charges.

Register of land charges.

10.—(1) The following classes of charges on, or obligations affecting, land may be registered as land charges in the register of land charges, namely:—

Class A:—A rent, or annuity, or principal money payable by instalments or otherwise, with or without interest, being a charge (otherwise than by deed) upon land created pursuant to the application of some person either before or after the commencement of this Act—

(i) under the provisions of any Act of Parliament, for securing to any person either the money spent by him or the costs, charges and expenses incurred by him under such Act, or the money advanced by him for repaying the money spent, or the costs, charges, and expenses incurred by another person under the authority of an Act of Parliament; or

24 & 25 Vict. c. 133.

(ii) under section thirty-five of the Land Drainage Act, 1861; or

13 & 14 Geo. 5, c. 9.

(iii) under section twenty or section forty-one of the Agricultural Holdings Act, 1923, or any previous similar enactment; or

8 & 9 Geo. 5, c. 54.

(iv) under section four or section six of the Tithe Act, 1918; or

11 & 12 Geo. 5, c. 20.

(v) under section one of the Tithe Annuities Apportionment Act, 1921; or

12 & 13 Geo. 5, c. 16.

(vi) under paragraph (6) of the Twelfth Schedule to the Law of Property Act, 1922;

but not including a rate or scot.

Land charges, Class A. Save for para. (vi), which is new, land charges included in Class A are those which before 1926 were land charges within the meaning of the L. C. A.,

1888, as defined *ib.*, s. 4, and include an absolute order by the Minister of Agriculture under the Improvement of Land As., 1864 and 1899.

For prescribed forms, see Land Charges Rules, 1925, Appendix No. IX., vol. ii. — Forms.

Land charges, Class A, when made for securing money, take effect as legal mortgages (s. 20 (4), *inf.*), but retain their priority: s. 11, *inf.*; the object is to enable the lenders to realize their securities without an order of the court: see L. P. A., 1925, ss. 87—89, 101, 104. — What land charges take effect as legal mortgages.

Land charges, Class A, created before 1889, but transferred after 1888, must be registered as land charges either under this Act or the L. C. A., 1888, within a year after the first transfer, otherwise they are void against a purchaser: s. 14, *inf.* — Protection of purchasers against a land charge, Class A, not registered within one year from assignment.

Land charges, Class A, created after 1888, are void against purchasers (s. 20 (8), *inf.*) of the land charged therewith or of any interest in such land, unless registered before completion of the purchase: ss. 13, 20 (8), *inf.* — Protection of purchasers against unregistered land charges, Class A, created after 1888.

Land charges registered under the L. C. A., 1888, have effect as if registered under this Act: s. 24, *inf.* In no case is notice material: L. P. A., 1925, s. 119 (1) (i).

Where land affected by a land charge, Class A, is registered land, the charge will be effected only by registration of a notice, caution, or other entry prescribed by the L. R. A., 1925, and the rules thereunder: L. R. A., 1925, s. 59 (2); see also s. 23, *inf.* — Effect of registration under the L.C.A., 1888. Registered land.

As to searches in the land charges register, see ss. 16, 17, *inf.*; the search must extend back to 1888. — Searches.

Class B:—A charge on land (not being a local land charge) of any of the kinds described in Class A, created otherwise than pursuant to the application of any person, either before or after the commencement of this Act, but if created before such commencement only if acquired under a conveyance made after such commencement.

Land charges included in Class B are those which are created *in invitum*, *e.g.*, under s. 257 of the Public Health A., 1875. Charges of this class were held in *Reg.* v. *Land Registry*, 1889, 24 Q. B. D. 178, not to be within the meaning of "land charges" in the L. C. A., 1888. "Not being a local land charge": s. 15, *inf.* — Land charges, Class B

The general effect of the provisions relating to Classes A and B is to make a land charge authorised by statute (not being a local land charge: s. 15, *inf.*) for securing to any person either the money expended by him or the costs, charges and expenses incurred by him under the statute, or the money advanced for repaying the money expended or the costs, charges and expenses incurred by another person under the authority of the statute, registerable as a land charge, whether the statute creates an automatic charge or authorises any person to apply for a charge to be made. — General effect as respects Classes A and B.

Land charges in this class for securing money also take effect as legal mortgages, but retain their priority: s. 11, *inf.*; and see note to Class A, *sup.* — Land charges, Class B, take effect as legal mortgages.

Where a land charge of Class B was created before 1926 and transferred after 1925, the charge will be void as against a purchaser of the land affected by the charge or of any interest in such land, unless it is registered as a land charge within one year of the transfer. — Protection of purchasers against land charge, Class B, not registered within one year from date of transfer.

Protection of purchasers against unregistered land charges, Class B, created after 1925.

A land charge, Class B, created after 1925 will be void against a purchaser (s. 20 (8), *inf.*) of the land charged therewith, or of any interest in such land, unless the land charge is registered before the completion of the purchase: ss. 13, 20 (8), *inf.* Notice is not material: L. P. A., 1925, s. 199 (1) (i).

Registered land.

Where the land affected by a land charge, Class B, is registered land, the charge will be effected only by registration of a notice, caution or other entry prescribed by the L. R. A., 1925, and rules thereunder: L. R. A., 1925, s. 59 (2); see also s. 23, *inf.*

Class C:—A mortgage charge or obligation affecting land of any of the following kinds, created either before or after the commencement of this Act, but if created before such commencement only if acquired under a conveyance made after such commencement, namely:—

(i) Any legal mortgage not being a mortgage protected by a deposit of documents relating to the legal estate affected, and (where the whole of the land affected is within the jurisdiction of a local deeds registry) not being registered in the local deeds register (in this Act called a "puisne mortgage"); and

Class C applies where the charge is created or transferred after 1925.

"Puisne mortgages."

Though "legal mortgage" is not defined in this Act, "charge by way of legal mortgage" is defined in s. 20 (4), *inf.*; "legal mortgage" must have the same meaning in this Act as in L. P. A., 1925, s. 205 (1) (xvi).

Effect of possession of documents of title.

Where a legal mortgagee of land is satisfied that he holds all the material documents relating to the legal estate affected by his mortgage, he need not register a charge. The effect of possession of documents is saved by L. P. A., 1925, s. 13.

Right of first mortgagee to possession of documents.

A first mortgagee's right to possession of the documents is saved by L. P. A., 1925, ss. 85 (1) and 86 (1), notwithstanding that the mortgage is by demise, sub-demise, or charge by way of legal mortgage.

What documents create a lien.

As to what documents were, before 1925, sufficient to create a lien, see 1 Coote, 7th ed., 71, 72; cf. *Walker* v. *Linom*, 1907, 2 Ch. 104 (charge given priority to suppressed settlement).

Equitable charges.

An equitable charge may be converted into a legal mortgage under L. P. A., 1925, s. 90; where is is not protected by the deposit of documents of title it should be registered as a general equitable charge under para. (iii), *inf.*, unless it arises under a trust for sale or a settlement.

Mortgages made before 1926.

All mortgages, made before 1926, which take effect after 1925 as legal mortgages under L. P. A., 1925, 1st Sch., Pts. VII. and VIII., and are not protected by the possession of documents, should be registered as puisne mortgages immediately after 1925, otherwise they lose the protection afforded by conversion into legal estates; for under L. P. A., 1925, 1st Sch., Pt. VII., para. (6), and Pt. VIII., para. (5), a mortgage which is not protected by deposit of documents or by registration of a charge will be deemed to remain an equitable interest as against a purchaser for value, in good faith,

without notice thereof; for this reason sub-s. (7), *inf.*, permits a mortgage to be registered before transfer.

Where a mortgage of unregistered land, made before 1926, is transferred after 1925, it must be registered within one year after the transfer, unless it is protected by deposit of documents, or the mortgage will be void against a purchaser for value of the land charged therewith or of any interest in such land: s. 14 (2), *inf.* Notice is not material: L. P. A., 1925, s. 119 (1) (i). Registration of mortgages created before 1926 on transfer after 1925.

As to the effect of registering a land charge in regard to further advances: L. P. A., 1925, s. 94. Effect of registration on further advances.

A mortgage of unregistered land, made after 1925, which is not registered as a land charge or protected by the deposit of documents will lose priority against one which is so registered, or protected, for a mortgage, not protected by deposit of documents, ranks according to the date of registration as a land charge: L. P. A., 1925, s. 97; the mortgage is also void against a purchaser of the land charged therewith or of any interest in such land: s. 13 (2), *inf.* Notice is not material: L. P. A., 1925, s. 119 (1) (i). Effect of non-registration of mortgages made after 1925.

Registration under this Act gives actual notice of the mortgage to all persons, including trustees distributing trust property and personal representatives distributing assets (T. A., 1925, s. 27 (2) (b)), and for all purposes connected with the land affected: L. P. A., 1925, s. 198; see also *ib.*, s. 199 (restriction on doctrine of constructive notice). Loss of priority. Void against a purchaser. Registration gives actual notice.

Registration of a mortgage or charge does not affect the rights of a prior mortgagee to overreach such mortgage by sale, foreclosure or otherwise: s. 22 (2), *inf.* Saving of overreaching powers of prior mortgagees.

A land charge for securing money created by a limited company will not be registered under this Act: sub-s. (5), *inf.*; for the Cos. (Consol.) A., 1908, ss. 93 to 102, contain special provisions for the registration of mortgages and charges in the companies' register at Somerset House. Application to limited companies.

Where the whole of the land affected by a mortgage is situated within the jurisdiction of a local deeds registry it will be sufficient if the mortgage is registered in the appropriate deeds registry: L. P. A., 1925, s. 97, 1st Sch., Pt. VII., para. (6), Pt. VIII., para. (5); but where the land is situated partly outside and partly within the jurisdiction of a local deeds registry the mortgage must be registered as a land charge under this Act, as well as by way of memorial in the local deeds register in respect of the land within its jurisdiction. Middlesex and Yorkshire.

If the title to the land is registered, no registration is required under this Act, save in the case of local land charges: s. 23, *inf.* Registered land.

(ii) Any equitable charge acquired by a tenant for life or statutory owner under the Finance Act, 1894, or any other statute, by reason of the discharge by him of any death duties or other liabilities, and to which special priority is given by the statute (in this Act called "a limited owner's charge"); and 57 & 58 Vict. c. 30.

"Death duties": s. 20 (4), *inf.*; "tenant for life," "statutory owner": *ib.*, sub-s. (13). The para. applies where the charge is created or assigned after 1925.

Under Fin. A., 1894, s. 9 (6), a person having a limited interest in any land, who pays the estate duty thereon, is entitled to a charge for the money so paid. Limited owner's charges, Class C (ii).

Powers to overreach a limited owner's charge.

Under S. L. A., 1925, s. 72 (3) (b), a tenant for life or statutory owner may overreach a limited owner's charge, whether registered or not, on a sale or other disposition under that Act; see also L. P. A., 1925, s. 2 (3) (v) (a). This provision will not prejudice the rights of the limited owner, for the charge attaches to the capital money. Overreaching powers have been saved by s. 22, *inf.* See also L. P. A., 1925, s. 28 (powers of trustees for sale); Ad. of E. A., 1925, s. 39 (powers of personal representatives).

Middlesex and Yorkshire registries.

A limited owner's charge need not be registered in the Middlesex or Yorkshire Deeds Registries, as it is only equitable: L. P. A., 1925, s. 11; nor in regard to Yorkshire does it come within sub-s. (5), *inf.* It is on the same footing as an Inland Revenue charge: Class D (i), *inf.*

Expenses of registration.

The expenses of registering a limited owner's charge may be added to the charge: s. 12, *inf.*

Protection of purchasers.

A limited owner's charge created after 1925 will be void against a subsequent purchaser for value unless it is registered as a land charge before the completion of the purchase: s. 13 (2), *inf.*; where the charge created before 1926 is transferred after 1925 the transferee will not be able to enforce it against a purchaser unless it is registered as a land charge within one year after the transfer: s. 14 (2), *inf.* In neither case is notice material: L. P. A., 1925, s. 199 (1) (i).

(iii) Any other equitable charge, which is not secured by a deposit of documents relating to the legal estate affected and does not arise or affect an interest arising under a trust for sale or a settlement and is not included in any other class of land charge (in this Act called "a general equitable charge"); and

This only applies to charges made after 1925, or to charges made before 1926 and assigned after 1925.

General equitable charge, Class C (iii).

A general equitable charge includes an annuity or rentcharge which before 1926 would have been registerable in the register of annuities: Pt. II., *sup.*

"Does not arise under a trust for sale or a settlement."

No registration is, however, required where the charge arises or affects an interest arising under a trust for sale or a settlement, for in these cases it is sufficiently protected by the fact that all capital money must be paid either to a trust corporation or to at least two trustees: L. P. A., 1925, ss. 2, 27; S. L. A., 1925, s. 94; Ad. of E. A., 1925, s. 12, replaced by Jud. A., 1925, s. 160.

"Not included in any other class."

This para. sweeps up the remaining equitable charges, not otherwise specifically named, which require protection.

Deposit of documents.

If secured by a deposit of documents, no registration is required: L. P. A., 1925, s. 13.

Overreaching powers.

A general equitable charge will be overreached on a sale by a tenant for life or statutory owner: S. L. A., 1925, s. 72 (3) (b); trustees for sale: L. P. A., 1925, s. 28; and by personal representatives: Ad. of E. A., 1925, s. 39 (ii). Overreaching powers are saved by s. 22, *inf.*

Yorkshire.

The registration of a general equitable charge in the appropriate Yorkshire Deeds Registry in the prescribed manner is sufficient: sub-s. (6), *inf.* For the prescribed manner, see Land Charges Rules, 1925, Appendix No. IX., Vol. II.

Middlesex.

In Middlesex a general equitable charge will be registered at the Land Registry as a land charge, and not under the Middlesex Registry A., 1708: s. 18, *inf.*

Registered land.

This para. does not apply to registered land: s. 23, *inf.*; see also L. R. A., 1925, s. 59.

General equitable charges created after 1925, if not registered, are void against subsequent purchasers for value of the land or any interest in the land charged therewith, whether or not the purchasers have notice: s. 13 (2), *inf.*; where the charge created before 1926 is transferred, the transferee cannot enforce it against a purchaser unless it is registered as a land charge within one year of the transfer: s. 14 (2), *inf.* Protection of purchasers.

The expenses of registering a general equitable charge forms part of the charge: s. 12, *inf.* Expenses of registering a land charge.

(iv) Any contract by an estate owner or by a person entitled at the date of the contract to have a legal estate conveyed to him to convey or create a legal estate, including a contract conferring either expressly or by statutory implication a valid option of purchase, a right of pre-emption or any other like right (in this Act referred to as "an estate contract").

This only applies to contracts made after 1925, or to contracts made before 1926 and assigned after 1925.

The following are examples of estate contracts:— "Estate contracts," Class C (iv).

(1) Contracts for sale or creation (*e.g.*, a mortgage or lease) of a legal estate, though, unless the date for completion is fixed a long time after that of the contract, it will not be generally necessary to register the contract. Contracts for sale, &c.

(2) Rights of pre-emption under the Lands Clauses A., 1845, s. 128: see *Coventry* v. *L. B. & S. C. Ry.*, 1867, 5 Eq. 104, extending the provisions of Lands Clauses A., 1845, s. 128, to lessees of land adjoining the superfluous land. As to releases of rights of pre-emption: L. P. A., 1925, s. 186. Rights of pre-emption.

(3) An option to purchase the reversion expectant on a term of years absolute contained in a lease must be registered, for though such options have been expressly saved from being affected by Part I. of the L. P. A., 1925 (*ib.*, s. 6), they have not been excluded from the operation of this Act. Options to purchase.

(4) Under L. P. A., 1925, s. 19 (6), a purported grant or transfer of a legal mortgage of land to an infant operates as an agreement for valuable consideration to grant or transfer the mortgage when the infant attains full age. Such an implied agreement should be registered as an estate contract. Implied contracts with infants, respecting mortgages.

(5) A declaration of trust involving the transfer of a legal estate should be registered as an estate contract until the declaration is implemented by a trust deed and a vesting deed. Under L. P. A., 1925, s. 19 (4), a purported conveyance of a legal estate to an infant alone or jointly with other infants, on any trusts, operates as a declaration of trust. Declarations of trust; attempt to convey trust estate to an infant.

(6) Under S. L. A., 1925, s. 27, a purported conveyance of a legal estate in land to an infant beneficially either alone or to two or more infants jointly operates as an agreement to make a settlement; this agreement should be registered as an estate contract. Effect of conveying legal estate to infant; contract for a settlement.

An estate contract affecting land in Yorkshire can be registered under sub-s. (6), *inf.* As to Middlesex, see s. 18, *inf.*; and as to registered land: s. 23, *inf.* Yorkshire.

Where an estate contract made after 1925 is not registered, it will only be void as against a purchaser for money's worth: s. 13 (2), *inf.* If it is made before 1926 and is assigned after 1925, it must be registered within one year from the assignment, otherwise it will be void as against a purchaser, whether or not for money's worth: s. 14 (2), *inf.* In neither case is notice material: L. P. A., 1925, s. 119 (1) (i). Protection of purchasers.

The overreaching powers (L. P. A., 1925, s. 2 (3) (iv); S. L. A., 1925, s. 72 (3)) do not enable a registered estate contract to be shifted to the proceeds, for it cannot properly be represented in terms of money. But an estate owner Overreaching powers.

can convey free from an estate contract made before 1926 till transferred after 1925 (when it comes within s. 14 (2), *inf.*) to a purchaser without notice thereof: L. P. A., 1925, s. 2 (5) (d). If the contract made or transferred after 1925 is registered, a purchaser will have notice of it: *ib.*, s. 198.

Class D:—A charge or obligation affecting land of any of the following kinds, namely:—

(i) Any charge acquired by the Commissioners of Inland Revenue under any statute passed or hereafter to be passed for death duties leviable or payable on any death which occurs after the commencement of this Act; and

Inland Revenue charge, Class D (i).

Estate duty charge.

Under the Fin. A., 1894, s. 9 (1), a rateable part of the estate duty on an estate, in proportion to the value of any real property passing to the personal representatives (Ad. of E. A., 1925, ss. 1 and 2), is a first charge on the property in respect of which the duty is leviable, subject to the protection of purchasers in good faith for value without notice of the charge: see *ib.*, s. 8 (18), as to protection of purchasers.

Succession duty charge.

Under Succ. D. A., 1853, s. 42, succession duty is a first charge in the interest of the successor in real property and of all persons claiming through him.

No charge on leaseholds.

The charge for estate duty was confined to property not then passing to the executor as such: Fin. A., 1894, s. 9 (1); this excluded leaseholds: *Bain* v. *Brand*, 1876, 1 A. C. 762; the charge for succession duty was expressly confined to real property: Succ. D. A., 1853, s. 42 (1); under *ib.*, s. 19, legacy duty is not to be a charge on leaseholds. See also L. P. A., 1925, s. 16 (6), as to leaseholds being free from a charge, and as to the position of mortgagees.

Personalty to be laid out in the purchase of real estate treated as personalty.

Under the Legacy D. A., 1796, s. 19, money or other personal estate directed to be laid out in the purchase of real estate is chargeable with duty as personalty. The combined result of this s. and Succ. D. A., 1853, s. 19, is that no charge for legacy duty can be registered; nor can any charge for estate duty in respect of personalty directed to be laid out in the purchase of land be registered until freehold land is actually acquired.

Protection of purchasers for money's worth.

If a charge for death duties arising on a death after 1925 is not registered, a purchaser for money's worth will take free therefrom under s. 13 (2), *inf.*, and L. P. A., 1925, s. 17 (1). In this case notice is not material: L. P. A., 1925, s. 119 (1) (i). Even if the charge attached before 1926, he will take free therefrom unless he had notice of the facts giving rise to the charge: L. P. A., 1925, s. 17 (1). As to the persons accountable and the funds out of which duties are to be paid: *ib.*, ss. 16, 18. In many cases it will not be necessary to register a charge.

Registered land.

Charges in respect of registered land will not be registered under this Act: s. 23, *inf.*; L. P. A., 1925, s. 17 (5); L. R. A., 1925, s. 73.

(ii) A covenant or agreement (not being a covenant or agreement made between a lessor and lessee) restrictive of the user of land entered into after the commencement of this Act (in this Act referred to as "a restrictive covenant"); and

"Restrictive covenants," Class D (ii).

It is not necessary to register a covenant made between a lessor and lessee; and see L. P. A., 1925, s. 6 (1). For definition: s. 20 (11), *inf.*

The overreaching provisions (L. P. A., 1925, s. 2 (3) (ii); S. L. A., 1925, s. 72 (2) (ii) (b)) do not apply if a land charge has been registered, for the covenant cannot be represented in terms of money. But covenants made before 1926 will not bind a purchaser unless he has notice of them: L. P. A., 1925, ss. 2 (5) (a), 44 (1) (8), 197—200. As to modifying or discharging restrictive covenants: *ib.*, s. 84.

Overreaching provisions.

Notice as respects covenants made before 1926.

As respects covenants made after 1925, notice will no longer be material; whether or not a purchaser will be bound depends on the registration of a land charge: s. 13 (2), *inf.* No question arises on the assignment of the benefit of a restrictive covenant made before 1926, for this para. only relates to covenants made after 1925; s. 14 (2) does not apply to Class D.

Covenants made after 1925.

Assignments immaterial.

(iii) Any easement, right or privilege over or affecting land created or arising after the commencement of this Act, and being merely an equitable interest (in this Act referred to as an "equitable easement").

An equitable easement (*e.g.*, some right held for life) is more in the nature of a licence than an easement; this Act only requires a land charge to be registered where the easement is created after 1925: see s. 13 (2); no question arises on the assignment of an equitable easement; s. 14 (2), *inf.*, does not apply to Class D.

"Equitable easements" created after 1925, Class D (iii).

The overreaching provisions (see note to last para.) do not apply to equitable easements. Whether a purchaser after 1925 will take subject to an equitable easement created before 1926 depends on notice: L. P. A., 1925, ss. 2 (5) (b), 200. If created after 1925 notice is not material: L. P. A., 1925, s. 119 (1) (i).

Created before 1926, notice material.

Legal easements, namely, those held for an interest equivalent to an estate in fee simple absolute in possession or for a term of years absolute (L. P. A., 1925, s. 1 (2) (a)), and annexed for the benefit of some land (*ib.*, s. 187), do not require a land charge to protect them, provided that they were created by an estate owner or in such a way (*ib.*, ss. 7—9) as to take effect at law. As to the reservation of legal easements: *ib.*, s. 65.

Legal easements.

Class E:—An annuity within the meaning of Part II. of this Act created before the commencement of this Act and not registered in the register of annuities.

For the meaning of annuity, see s. 4 (5), *sup.*

"Annuity."

This class is added to enable annuitants who failed to register under the Judgments A., 1855, to do so after 1926, for no further entries will be made in the annuity register: s. 4 (1).

Class E.

Protection is given to purchasers and creditors under s. 5, *sup.* Class E is not mentioned in ss. 13 or 14, *inf.*

Protection of purchasers and creditors.

As to annuities created after 1925 for money's worth and not arising under a trust for sale or a settlement, see note to Class C (iii), *sup.*

General equitable charges.

(2) A land charge shall be registered in the name of the estate owner whose estate is intended to be affected except that, in the case of a land charge registered before the commencement of this Act, under any enactment replaced by this Act, in the name of a person not being the estate owner, it may remain so registered until

it is registered in the name of the estate owner in the prescribed manner.

Mode of registration of land charges.

"Estate owner": s. 20 (4), *inf.*; *i.e.*, the owner of a legal estate.

Under the L. C. A., 1888, s. 10, land charges in respect of freehold land were registered in the name of the person beneficially entitled to the first estate of freehold at the time of the creation of the land charge, and in the case of copyhold land (now enfranchised), in the name of the tenant on the court rolls.

Registration before 1926 in the name of a person not being the estate owner.

Where the person making the application to register the land charge was beneficially entitled to a lease for lives or a life (converted into terminable terms: L. P. A., 1925, s. 149) at a rent or to a term of years, the land charge was also registered in the name of that person.

Changes consequential on vesting provisions.

As a result of L. P. A., 1922, 12th Sch. (vesting provisions of enfranchised land); L. P. A., 1925, 1st Sch., Pts. II. (vesting of legal estates generally), III. (provisions as to legal estate vested in infant), IV. (provisions subjecting land held in undivided shares to a trust for sale), VII. and VIII. (mortgages); S. L. A., 1925, 2nd Sch. (transitional provisions as to settled land), the estate owner after 1925 will frequently be different from the person in whose name the registration before 1926 was effected.

For instance, after 1925 an infant cannot be an estate owner, nor can a legal estate be held in undivided shares: L. P. A., 1925, s. 1 (6). The legal estate in settled land will be vested in the tenant for life of full age, &c.: *ib.*, 1st Sch., Pt. II., para. (6) (c). All mortgagors will have legal estates. Enfranchised land will vest in the persons entitled thereto under the new law, without regard to the entries on the court rolls.

When alterations should be made.

When a dealing occurs or the facts of the title are otherwise ascertained, application should be made to register the land charge in the name of the estate owner whose estate is affected.

(3) Where a land charge is not created by an instrument, short particulars of the effect of the charge shall be furnished with the application to register the charge.

Effect of the charge.

"Instrument" here would not include an Act of Parliament: *cf.* L. P. A., 1925, s. 205 (1) (viii).

For forms of application: Appendix No. IX., Vol. II.

(4) Nothing in this section shall be deemed to authorise the Commissioners of Inland Revenue to register a land charge in respect of any claim for death duties unless the duty has become a charge on the land, and the application to register any such charge shall state the duties in respect of which the charge is claimed, and, so far as possible, shall define the land affected, and such particulars shall be entered or referred to in the register.

Registration of Inland Revenue charge.

As to when a charge arises for securing payment of death duties: note to Class D (i), *sup.*

It will not always be possible for the Commissioners to state what land is affected.

The charge, if any, should generally be registered against the names of the personal representatives of the deceased, except where they have assented in

writing to the vesting of the legal estate (Ad. of E. A., 1925, s. 36; S. L. A., 1925, s. 8, 1st Sch., Form No. 5), or where the claim has arisen by reason of the cesser of the interest of a person who was not the estate owner. The general rule will be to register the charge against the estate owners accountable for the duty.

(5) In the case of a land charge for securing money, created by a company, registration under section ninety-three of the Companies (Consolidation) Act, 1908, shall be sufficient in place of registration under this Act, and shall have effect as if the land charge had been registered under this Act. 8 Edw. 7, c. 69.

Registration under Companies Act, 1908.

The object of this sub-s. is to avoid double registration; when dealing with a company incorporated under the Cos. As. a search at Somerset House in the companies file is essential independently of land charges. The sub-s. does not apply to land charges in respect of estate contracts, restrictive covenants or equitable easements.

(6) In the case of a general equitable charge, restrictive covenant, equitable easement or estate contract affecting land within any of the three ridings, the registration in the prescribed manner in the appropriate local deeds registry of the document creating it shall be sufficient in place of registration under this Act, and the registration shall, as respects such land, have effect as if the land charge created by the document had been registered under this Act.

Registration in Yorkshire of certain land charges.

"The three ridings": s. 20 (12), *inf.*

See notes to Class C (iii), (iv), Class D (ii) and (iii), *sup.*

This sub-s. is designed to avoid duplication of registration. For the "prescribed manner," see Land Charges Rules, 1925, Appendix No. IX., Vol. II. The principle is not applied to the Middlesex Deeds Register: s. 18, *inf.*; for that is kept at the Land Registry. The registration is confined to cases where the "charge" is created by a "document."

Registration of memorials.

Under L. P. A., 1925, s. 11, registration by way of memorial is confined to documents transferring, creating or evidencing the devolution of legal estates. This includes "puisne mortgages" (Class C (i), *sup.*) where the whole of the land is within the riding.

Purchasers must search at the Land Registry.

Notwithstanding the wide range of registration authorised in each riding, an intending purchaser of land within the riding cannot properly be advised after 1925 to dispense with obtaining an official certificate of search at the Land Registry. In view of the wide range covered by pending actions, writs, orders and the land charges not authorised to be registered in Yorkshire, the risk would be too great.

Results by telegram, &c.

No delay need occur, for the result of a search can be obtained from the Land Registry by telegram or telephone: Appendix No. IX., Pt. II., Vol. II.

(7) A puisne mortgage created before the commencement of this Act may be registered as a land charge before any transfer of the mortgage is made.

Registration of a puisne

This sub-s. enables a mortgage created before 1926 and not protected by deposit of documents to be placed in the position of a legal mortgage. If a land

mortgage before transfer.

charge is not registered, the mortgage remains equitable as respects a purchaser without notice of it: L. P. A., 1925, 1st Sch., Pt. VII. (6) and Pt. VIII. (5).

For definition of "puisne mortgage": s. 10, Class C (i), *sup.*

(8) The registration of a land charge may be vacated pursuant to an order of the court or a judge thereof.

Vacation of land charge.

This sub-s. replaces the L. C. A., 1888, s. 14; the order may be made in chambers.

For other means of cancelling a land charge on the cesser thereof, or where it has been overreached: s. 19 (1) (b), *inf.*; Appendix No. IX., Vol. II.

Over-reaching of registered land charges.

A "puisne mortgage" (Class C (i), *sup.*), though registered, can be overreached by a conveyance on sale or authorised lease by a prior mortgagee, or by foreclosure or title by adverse possession, or by a valid lease by a mortgagor in possession to the extent of the term: L. P. A., 1925, ss. 88, 89, 99, 101, 104; see also s. 22 (2), *inf.*

A "limited owner's charge," though registered, can be overreached, as mentioned in note to s. 10, Class C (ii), *sup.*

A "general equitable charge," though registered, can be overreached, as mentioned in note to Class C (iii), *sup.*, but if it arises under a trust for sale or a settlement it ought not to be registered.

When registration effective.

It is not necessary for the registrar to decide whether or not a land charge should be registered; he can register what is put before him; only when an interest is authorised to be registered is the registration effective; and see L. P. A., 1925, s. 198.

An "annuity" which is registered can be overreached: see note to s. 5, *sup.*

What land charges take effect as legal mortgages.

11. A land charge of Class A or Class B for securing money, created before or after the commencement of this Act, shall, when registered, take effect as if it had been created by a deed of charge by way of legal mortgage, but without prejudice to the priority of the charge.

Effect of s.

The effect of this s. is to enable persons or corporations entitled to the benefit of land charges, Classes A and B, for securing money, to realise their security without an order of the court.

As to the effect of a "charge by way of legal mortgage": L. P. A., 1925, s. 87; and see definition, s. 20 (4), *inf.* Only where the charge is effected by deed is a power of sale implied: L. P. A., 1925, s. 101; hence the words "deed of charge."

Expenses of registering land charges.

12.—(1) Except as in this section provided, the expenses incurred by the person entitled to a land charge created before or after the commencement of this Act in causing the charge to be registered in the appropriate register shall be deemed to form part of the land charge, and shall be recoverable by him accordingly on the day for payment of any part of the land charge next after such expenses are incurred.

Application of s.

This sub-s. reproduces the L. C. A., 1888, s. 11; it extends the provisions to all land charges whenever created, except in respect of land charges, Class E, restrictive covenants, equitable easements or estate contracts: sub-s. (2), *inf.*

(2) This section does not apply to the expenses incurred in registering a land charge of Class E or in registering as a land charge a restrictive covenant, an equitable easement or an estate contract.

Expenses when not added to charge.

There is no reason why the expenses of registering an annuity which could have been registered before 1926 should be added to the charge. Restrictive covenants, equitable easements and estate contracts are not primarily made for securing money. If an estate contract consists of an agreement to execute a legal mortgage, it should itself provide for the cost of registration.

Protection of purchasers against land charges created after certain dates.

13.—(1) A land charge of Class A created after the thirty-first day of December, eighteen hundred and eighty-eight, shall be void as against a purchaser of the land charged therewith or of any interest in such land, unless the land charge is registered in the register of land charges before the completion of the purchase.

This sub-s. reproduces the L. C. A., 1888, s. 12.

"Purchaser": s. 20 (8); "purchase": *ib.* A purchaser is not affected by notice of any matter which ought to be registered under this Act: L. P. A., 1925, s. 199 (1) (i).

(2) A land charge of Class B, Class C or Class D, created or arising after the commencement of this Act, shall (except as hereinafter provided) be void as against a purchaser of the land charged therewith, or of any interest in such land, unless the land charge is registered in the appropriate register before the completion of the purchase:

Provided that, as respects a land charge of Class D and an estate contract created or entered into after the commencement of this Act, this subsection only applies in favour of a purchaser of a legal estate for money or money's worth.

Land charges affected.

Class B: *i.e.*, similar to those in the old Class A, but not made "pursuant to an application," and not including "local land charges" within s. 15.

Class C: *i.e.*, "puisne mortgages," "limited owner's charges," "general equitable charges" and "estate contracts."

Class D: *i.e.*, Inland Revenue charges, "restrictive covenants" and "equitable easements."

Protection of purchasers against a land charge (Classes A, B or C) not registered within one year from assignment.

14.—(1) After the expiration of one year from the first conveyance, occurring on or after the first day of January, eighteen hundred and eighty-nine, of a land charge of Class A created before that date, the person entitled thereto shall not be able to recover the land charge or any part thereof as against a purchaser of the land charged therewith or of any interest in the land,

unless the land charge is registered in the register of land charges before the completion of the purchase.

This sub-s. reproduces the L. C. A., 1888, s. 13; though s. 10, Class A, has been brought up to date. A purchaser is not affected by notice of any matter which ought to be registered under this Act: L. P. A., 1925, s. 199 (1) (i).

(2) After the expiration of one year from the first conveyance, occurring after the commencement of this Act, of a land charge of Class B or Class C created before such commencement, the person entitled thereto shall not be able to enforce or recover the land charge or any part thereof as against a purchaser of the land charged therewith, or of any interest in the land, unless the land charge is registered in the appropriate register before the completion of the purchase.

Land charges affected.

Class B: *i.e.*, not made "pursuant to the application of any person."

Class C: *i.e.*, "puisne mortgages," "limited owner's charges," "general equitable charges" and "estate contracts."

"Appropriate register."

"Appropriate register": registration of a "puisne mortgage" in a local deeds register is sufficient. See also s. 10 (5) as to registration of charges to secure money in the joint stock companies' register; also s. 10 (6) as to registration in a Riding deeds register.

Part VI.

Local Land Charges.

Registration of local land charges.

15.—(1) Any charge (hereinafter called "a local land charge") acquired either before or after the commencement of this Act by the council of any administrative county, metropolitan borough, or urban or rural district, or by the corporation of any municipal borough, or by any other local authority under the Public Health Acts, 1875 to 1907, the Metropolis Management Acts, 1855 to 1893, or the Private Street Works Act, 1892, or under any similar statute (public general or local or private) passed or hereafter to be passed, which takes effect by virtue of the statute, shall be registered in the prescribed manner by the proper officer of the local authority, and shall (except as hereinafter mentioned in regard to charges created or arising before the commencement of this Act) be void as against a purchaser for money or money's worth of a legal estate in the land affected thereby, unless registered in the appropriate register before the completion of the purchase.

55 & 56 Vict. c. 57.

Protection of purchasers.

Before 1926 inquiries had to be made of local authorities in regard to these charges, but they were, with insignificant exceptions, under no obligation to reply or keep a register.

After 1925 official certificates of search will be obtainable from the local authority: s. 17, *inf.*

For the Local Land Charges Rules, 1925, see Appendix No. IX., Pt. IV., Vol. II. The registers will generally be based on plans. Rules.

Drainage authorities and similar authorities will keep the principal local authority informed as respects charges claimed by them, but in some cases it will be necessary to apply to more than one local authority for certificates of search. Searches at more than one authority.

It would have been more satisfactory if all the searches could have been made at the Land Registry, but it was found impracticable to arrange for this.

The General Conditions of 1925 (see Appendix No. III., Pt. II., Vol. II.) adjust the position between vendor and purchaser as respects local land charges. Vendor and purchaser.

(2) Except as expressly provided by this section, the provisions of this Act relating to a land charge of Class B shall apply to a local land charge.

As to Class B, see ss. 10 to 14, *sup.*; also L. P. A., 1925, s. 119 (1) (i).

Only purchasers for money's worth are protected: sub-s. (1), *sup.*; one year from 1st January, 1926, is allowed for the registration of charges arising before that date: sub-s. (5), *inf.* The s. applies to registered land: sub-s. (8). The officer of the local authority takes the place of the registrar. Distinctive features of local charges.

(3) As regards a local land charge, the registration by the proper officer shall (without prejudice to the right of the registrar also to register the charge if and when the prescribed application and information is made and furnished to him) take the place of registration by the registrar, and, in reference thereto, the proper officer of the local authority shall have all the powers and be subject to the same obligations as the registrar has or is subject to in regard to a land charge.

"Proper officer": Appendix No. IX., Pt. IV., Vol. II. Generally this is the clerk of the county council or other local authority. Duties of "proper officer."

(4) Where a local authority has expended money for any purpose which, when the work is completed and any requisite resolution is passed or order is made, will confer a charge upon land, the proper officer of the local authority may in the meantime register a local land charge in his register against the land generally, without specifying the amount, but the registration of any such general charge shall be cancelled within the prescribed time not being less than one year after the charge is ascertained and allotted, and thereupon the specific local land charges shall, unless previously discharged, be registered as of the date on which the general charge was registered.

The object of this sub-s. is to afford time within which the amounts can be allotted. In most cases the money will be paid before it is necessary to register a specific charge. General local charges.

(5) Nothing in this section operates to impose any obligation to register any local land charge created or arising before the commencement of this Act except after the expiration of one year from such commencement or to discharge a purchaser from liability in respect of any local land charge which is not for the time being required to be registered.

Charges arising before 1926.

This follows the principle adopted in s. 14, *sup.*, and gives time within which complete registers can be made.

(6) Separate rules may be made under this Act in reference to local land charges for giving effect to the provisions of this section and in particular—

(a) for prescribing the mode of registration of a general or specific charge;

(b) for empowering a local authority, where it has no means (without incurring unreasonable expense) of ascertaining the person against whom a specific charge should be registered, to register the same only against the land affected;

(c) for prescribing the proper officer to act as local registrar, and making provision as to official certificates of search to be given by him in reference to subsisting entries in his register;

(d) for determining the effect of an official certificate of search in regard to the protection of a purchaser, solicitor, trustee or other person in a fiduciary position, and for prescribing the fees to be paid for any such certificate or for a search;

(e) for prescribing the fees, if any, to be paid for the cancellation of an entry in the register.

Rules and fee order.

For the rules and fee order: Appendix No. IX., Pt. IV., Vol. II. Official certificates of search have similar effect to those issued under s. 17, *inf.*

No fees are prescribed for vacating entries; it will be the duty of the local authority to keep its register up to date.

(7) For the purposes of this section, any prohibition of or restriction on the user or mode of user of land or buildings enforceable by any local authority by virtue of any statute or any order, scheme or instrument made in pursuance of any statute, and any resolution passed by a local authority to prepare or adopt a town planning scheme, shall be deemed to be a restrictive covenant, and where arising or passed after the commencement

of this Act shall be registered by the proper officer as a local land charge:

Provided that any such prohibition, restriction or resolution affecting an area or district may be registered generally against the area or district by reference to the statute, order, scheme or instrument under which it is imposed.

These in the main arise under town planning schemes.

Restrictions on user of land.

(8) This section applies to local land charges affecting registered as well as unregistered land.

See also ss. 20 (10) and 23, *inf.*

Registered land.

Part VII.

Searches and Official Searches.

16. Any person may search in any register or index kept in pursuance of this Act on paying the prescribed fee.

Power to make searches.

This s. replaces the L. C. A., 1888, s. 16.

As to the index to be kept: s. 1 (2), *sup.* An official certificate should be obtained of search in each index before application is made in regard to a register.

"Index."

As to fees, see Land Charges Fee Order, 1925: Appendix No. IX., Pt. II., Vol. II.

Prescribed fees.

17.—(1) Where any person requires search to be made at the registry for entries of any matters or documents, whereof entries are required or allowed to be made in the registry by this Act, he may on payment of the prescribed fee lodge at the registry a requisition in that behalf.

Official certificates of search.

This s. reproduces C. A., 1882, s. 2, and L. C. A., 1888, s. 17; it does not authorise the issue of office copies; a certificate will be issued. And see note to last s.

"Allowed to be made," *e.g.*, a "puisne mortgage" made before 1926, before transfer thereof, under s. 10 (7), *sup.*

"Prescribed fee": see Land Charges Fee Order, 1925, Appendix No. IX., Pt. II., Vol. II.

For forms of application for an official search, see Sched. to Land Charges Rules, 1925, Appendix No. IX., Pt. I., Vol. II.

Form of application.

(2) The registrar shall thereupon make the search required, and shall issue a certificate setting forth the result thereof.

In the first instance the certificate should be confined to entries in the index. If anything material appears therein, another certificate will be required in regard to the register in which the entry occurs. This will save costs.

Certificate of search.

(3) In favour of a purchaser or an intending purchaser, as against persons interested under or in respect of matters or documents whereof entries are required or allowed as aforesaid, the certificate, according to the tenor thereof, shall be conclusive, affirmatively or negatively, as the case may be.

See also sub-ss. (7)—(9), *inf.*

Protection of purchasers.

In view of this protection and of the largely increased importance of the entries in the registers (s. 1) kept under this Act, personal searches should be avoided. The fees for the certificate are so small that it is not worth while to make a personal search.

In *Procter* v. *Cooper,* 1853, 2 Drew. 1, a purchaser making a search for judgments was held to have notice of an incumbrance which he failed to discover. The certificate is now conclusive.

Certificates to be abstracted.

After 1925 a note of each material certificate obtained should appear in abstracts of title.

(4) Every requisition under this section shall be in writing, signed by the person making the same, specifying the name against which he desires search to be made, or in relation to which he requires a certificate of result of search, and other sufficient particulars.

Application for certificate.

For form of application: Appendix No. IX., Pt. I., Vol. II.

(5) If any officer, clerk, or person employed in the registry commits, or is party or privy to, any act of fraud or collusion, or is wilfully negligent, in the making of or otherwise in relation to any certificate under this section, he shall be guilty of a misdemeanour and shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, or on summary conviction to imprisonment for a term not exceeding three months or to a fine not exceeding twenty pounds, or to both such imprisonment and fine.

Penalty for offences at registry.

The last five lines of this sub-s. (words after "misdemeanour") are new.

(6) Nothing in this section or in any rule made under this Act affects any right which any person may have independently of this section to make any search in the registry; and every such search may be made as if this section or any such rule had not been enacted or made.

Personal searches.

Though the right to make personal searches is reserved, it should seldom be exercised: see note to sub-s. (3), *sup.*

(7) Where a solicitor obtains a certificate of result of search under this section, he shall not be answerable

in respect of any loss that may arise from error in the certificate.

Protection of solicitors.

See note to sub-s. (3), *sup.* A solicitor should rely on this sub-s. and not search himself. He should, however, see that a requisition delivered under sub-s. (1) is properly framed.

(8) Where the solicitor is acting for trustees, executors, agents, or other persons in a fiduciary position, those persons also shall not be so answerable.

Protection of trustees, &c.

See note to sub-s. (3), *sup.*

(9) Where such persons obtain such a certificate without a solicitor, they shall also be protected in like manner.

Further protection to trustees.

See note to sub-s. (3), *sup.*

Extension to Middlesex, Yorkshire, &c.

Official certificates can now be obtained of searches in the Middlesex and Yorkshire deeds registers, and also from local authorities in respect of local land charges; in each case the principles of this s. are made applicable.

Part VIII.

General.

7 Anne, c. 20, not to apply to certain instruments.

18. It is not necessary to register under the Middlesex Registry Act, 1708—

(a) any deed of arrangement, land charge of Class A or other instrument made or created on or after the thirtieth day of July, nineteen hundred; or

(b) any land charge (except a puisne mortgage) of Class B, Class C or Class D created or made after the commencement of this Act;

which is or was capable of registration under this Act, or any enactment replaced by this Act.

Middlesex Registry.

This s. reproduces L. C. A., 1900, s. 4, and extends the exemption to land charges authorised to be registered for the first time by this Act. There is no similar exemption in respect of charges on land in Yorkshire.

Exemption as respects judgments, &c.

Under the Land Registry (Middlesex Deeds) A., 1891, s. 6, it is not necessary for the validity of any judgment, statute, or recognisance that a memorial should be registered under the Act of 1708. See also as to judgments, &c., L. P. A., 1925, s. 195.

"Except a puisne mortgage."

A "puisne mortgage" is a legal mortgage: s. 10, Class C (i), *sup.*

Class E excluded.

After 1925 registration of memorials of documents in the Middlesex Register is confined to documents transferring, creating or evidencing the devolution of a legal estate: L. P. A., 1925, s. 11; thus Class E (equitable annuities) will not be registered in this register.

General rules.

19.—(1) The Lord Chancellor may, with the concurrence of the Treasury as to fees, make such general rules as may be required for carrying this Act into effect, and in particular—

(a) as to forms and contents of applications for registration, modes of identifying where practicable the land affected, requisitions for and certificates of official searches, and regulating the practice of the registry in connexion therewith:

(b) for providing for the mode of registration of a land charge (and in the case of a puisne mortgage, general equitable charge, estate contract, restrictive covenant or equitable easement by reference to the instrument imposing or creating the charge, interest or restriction, or an extract therefrom) and for the cancellation without an order of court of the registration of a land charge, on the cesser thereof, or with the consent of the person entitled thereto, or on sufficient evidence being furnished that the land charge has been overreached under the provisions of any statute or otherwise.

This s. reproduces the L. C. A., 1888, s. 18, with amendments.

For the rules and fee order, see Appendix No. IX., Vol. II.

Cancellation of land charges.

As to cancellation of the registration of a land charge which has been overreached, see note to s. 10 (8), *sup.*

Defeated for want of registration in time.

A land charge may, as regards Class E (annuities), be defeated under s. 5, and as regards the other classes, under ss. 13 or 14, for want of registration "before the completion of the purchase," the registration being made too late.

On cesser.

"On the cesser thereof," *e.g.*, an annuity or an equitable easement, may cease by the dropping of a life; a puisne mortgage, a limited owner's charge, a general equitable charge or an Inland Revenue charge may cease by being paid off, released or cleared by a certificate under L. P. A., 1925, s. 16 (7); an estate contract may be rescinded or released; a restrictive covenant may be released by deed, or modified or discharged under L. P. A., 1925, s. 84; and an equitable easement may be released.

(2) As respects the registration and re-registration—

(a) of a petition in bankruptcy as a pending action; and

(b) of a receiving order in bankruptcy as an order affecting land;

rules may be made under and in the manner provided by section one hundred and thirty-two of the Bank-

ruptcy Act, 1914, as if the registration and re-registration were required by that Act. 4 & 5 Geo. 5, c. 59.

For the rules made by the Bankruptcy Department: Appendix No. IX., Pt. III., Vol. II. Board of Trade rules.

20. In this Act, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say:— Definitions.

(1) "Conveyance" includes a mortgage, charge, lease, assent, vesting declaration, vesting instrument, release and every other assurance of property, or of an interest therein, by any instrument except a will, and "convey" has a corresponding meaning;

"Every other assurance": *e.g.*, a transfer of a mortgage, or an assignment of the benefit of an estate contract. "Conveyance."

"Will" includes codicil: sub-s. (4), *inf.*

(2) "Court" means the High Court of Justice, also the Court of Chancery of the County Palatine of Lancaster or Durham, or the county court where those courts respectively have jurisdiction;

County courts are included, having regard to their jurisdiction in bankruptcy. "Court."

(3) "Deed of arrangement" has the same meaning as in the Deeds of Arrangement Act, 1914; 4 & 5 Geo. 5, c. 47.

See definition in s. 1 of Act of 1914: it need not in all cases be under seal. "Deed of arrangement."

(4) "Estate owner," "legal estate," "equitable interest," "trust for sale," "charge by way of legal mortgage," "will," and "death duty" have the same meanings as in the Law of Property Act, 1925; 15 Geo. 5, c. 20.

"Estate owner": ss. 1, 205 (1) (v); "legal estate" ss. 1, 205 (1) (x); "equitable interest": *ib.*; "trust for sale": s. 205 (1) (xxix); "charge by way of legal mortgage": ss. 87 and 205 (1) (xvi); "will": s. 205 (1) (xxxi); "death duty": s. 205 (1) (iv). References to L.P.A., 1925

(5) "Judgment" includes any order, rule or decree having the effect of a judgment;

See note to s. 6 (1), *sup.* "Judgment."

(6) "Land" includes land of any tenure, and mines and minerals, whether or not severed from

the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments, also a manor, an advowson and a rent and other incorporeal hereditaments, and an easement, right, privilege or benefit in, over or derived from land, but not an undivided share in land, and "hereditament" means real property which, on an intestacy occurring before the commencement of this Act, might have devolved on an heir;

"Land." See note to L. P. A., 1925, s. 205 (1) (ix), containing a corresponding definition. Undivided shares are excluded, for after 1925 they can only take effect with respect to the proceeds of sale.

(7) "Land charge" means a land charge of every class and includes a local land charge;

Land charge. "Local land charge" is defined in s. 15, *sup.*

(8) "Purchaser" means any person (including a mortgagee or lessee) who, for valuable consideration, takes any interest in land or in a charge on land; and "purchase" has a corresponding meaning;

"Purchaser." "Purchase." This reproduces the definition in L. C. A., 1888, s. 4; but in reference to trustees in bankruptcy (ss. 3 and 7), and to land charges, Class D, and estate contracts (s. 13), "purchaser" means a purchaser of a legal estate for money's worth.

(9) "Prescribed" means prescribed by rules made pursuant to this Act;

"Prescribed." See ss. 15 (6), 19 (1), (2); Appendix No. IX., Vol. II.

(10) "Registrar" means the Chief Land Registrar; "registry" means His Majesty's Land Registry; and "registered land" has the same meaning as in the Land Registration Act, 1925;

15 Geo. 5, c. 21.

"Chief Land Registrar": L. R. A., 1925, s. 126 (1); "H. M. Land Registry": *ib.*; "registered land": *ib.*, s. 3 (xxiv).

(11) "Restrictive covenant" includes the conditions, stipulations and restrictions which the Commissioners of Works may, under any statutory power, impose on enfranchised land, after the commencement of this Act, for the protection

of the amenities of royal parks, gardens, and palaces;

See L. P. A., 1922, s. 137; under that s. the Commissioners of Works must register the restrictions as land charges. For further definition: s. 10. Class D (ii), *sup.*

"Restrictive covenant."

(12) "The three ridings" has the same meaning as in the Yorkshire Registries Act, 1884;

47 & 48 Vict. c. 54.

See s. 10 (6), *sup.*; and Act of 1884, s. 3; *cf.* L. R. A., 1925, s. 135 (1).

"The three ridings."

(13) "Tenant for life," "statutory owner," "vesting instrument" and "settlement" have the same meanings as in the Settled Land Act, 1925.

15 Geo. 5, c. 18.

"Tenant for life": ss. 19—25, 117 (1) (xxviii); "statutory owner": ss. 23, 26, 117 (1) (xxvi); "vesting instrument": s. 117 (1) (xxxi); "settlement": ss. 1, 3, 31, 117 (1) (xxiv).

References to S.L.A., 1925.

21. Where any charge or other matter is capable of registration under two or more Parts of this Act, it shall be sufficient if it is registered under any one Part, and if registered under such one Part the person entitled to the benefit thereof shall not be prejudicially affected by the provisions of another Part by reason only that it was not also registered under that other Part.

Effect of registration under any Part of Act.

This s. does not enlarge the effect of registration under any one part of the Act so as to render it unnecessary, for all purposes, to register a matter under another part; it saves the operation of the registration, notwithstanding that the matter has become capable of being registered under another part. Nor does it prevent the registration from being cancelled if it has become spent. Thus, if a petition in bankruptcy is registered as a pending action, it has the effect prescribed by s. 3; when the receiving order is made it must be registered under s. 6, otherwise s. 7 (1) will apply. But if a land charge is registered under Pt. V., it is unnecessary to register it also as a local land charge under Pt. VI.: see s. 15 (3), or *vice versâ*.

Registration under any Part operates as notice: L. P. A., 1925, s. 198, but notice may be immaterial: *ib.*, s. 2 (1).

Notice.

In order to comply with L. P. A., 1925, s. 195, a writ or order must be registered; the registration of a pending action would not give the creditor an equitable charge. But, if the writ or order is registered, it is not necessary to register a general equitable charge as a land charge.

Judgments.

22.—(1) The registration of any charge, annuity, or other interest under this Act shall not prevent the charge, annuity, or interest being overreached under any provision contained in any other statute, except where otherwise provided by that other statute.

Saving of overreaching powers.

For the overreaching provisions in other statutes: L. P. A., 1925, ss. 2, 9, 17, 27, 28, 30, 88, 89, 101, 104, 204; S. L. A., 1925, ss. 72, 110; T. A., 1925, ss. 17, 49; Ad. of E. A., 1925, ss. 2, 27, 36—39.

"Contained in any other statute."

(2) The registration as a land charge of a puisne mortgage or charge shall not operate to prevent that mortgage or charge being overreached in favour of a prior mortgagee or a person deriving title under him where, by reason of a sale foreclosure or otherwise, the right of the puisne mortgagee or subsequent chargee to redeem is barred.

Overreaching of puisne mortgages, &c.

See s. 10. Class C (i) and (ii), for meaning of "puisne mortgages" and "general equitable charges."

For the overreaching powers: L. P. A., 1925, ss. 88–91, 101, 104.

Application to registered land.

23.—(1) As respects pending actions, writs, orders, deeds of arrangement and land charges (not including local land charges) required to be registered or re-registered after the commencement of this Act, this Act shall not apply thereto, if and so far as they affect registered land, and can be protected under the Land Registration Act, 1925, by lodging or registering a creditor's notice, restriction, caution, inhibition or other notice.

"Local land charges."

"Land charges" would have included "local land charges" but for the express exception: s. 20 (7), *sup.*

Petitions and receiving orders in bankruptcy.

As to the mode of dealing with these claims when affecting registered land: L. R. A., 1925, ss. 59—61. When a petition in bankruptcy affecting registered land has been registered as a pending action under this Act, the registrar will register a "creditor's notice" under s. 61 (1). When the receiving order is registered under this Act the registrar will enter a bankruptcy inhibition under s. 61 (3).

"Registered land": s. 20 (10), *sup.*; L. R. A., 1925, s. 3 (xxiv).

(2) Nothing in this Act imposes on the registrar any obligation to ascertain whether or not a pending action, writ, order, deed of arrangement or land charge affects registered land.

Duties of registrar as respects registered land.

Though under this Act the registrar will act in a ministerial capacity and register what is placed before him, whether or not the claim affects registered land, still under L. R. A., 1925, s. 61, he has specific duties to perform in connexion with petitions and receiving orders in bankruptcy: see note to last sub-s.

How far registration affects registered land.

Under this s. the registration does not, save as respects local land charges, have any direct operation on the title to registered land, though, in regard to petitions and receiving orders in bankruptcy, it brings s. 61 into force.

Repeals.

24. The Acts mentioned in the Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule:

Provided that, without prejudice to the provisions of section thirty-eight of the Interpretation Act, 1889:—

52 & 53 Vict. c. 63.

(a) Nothing in this repeal shall affect any entry in a

register made under any enactment so repealed, but the registration shall have effect as if made under this Act;

(b) Nothing in this repeal shall affect any rules made under any enactment so repealed, but all such rules shall continue in force as if made under the corresponding enactment in this Act;

(c) References in any document to any enactment repealed by this Act shall be construed as references to this Act or to the corresponding enactment in this Act.

Acquired and accrued rights.

The Interp. A., 1889, s. 38, keeps alive accrued and acquired rights: *Hamilton-Gell* v. *White*, 1922, 2 K. B. 422.

Registration under repealed Acts.

Registration under L. C. As., 1888 and 1900, operates as registration under this Act, thus, after 1925, gives notice of the registered claim: L. P. A., 1925, s. 198; it is, however, conceived that rights acquired or accrued before 1926 in the absence of notice will remain unaffected though that s. speaks of "the date of registration or other prescribed date." So far as the effect of registration under this Act differs (see, *e.g.*, s. 11, *sup.*) from the effect under the repealed Act, the rights will be varied after 1925.

Rules.

The former rules will be rescinded; the Land Charges Rules and Fee Order of 1925 will take their place.

References.

For instance, L. P. A., 1922, s. 137 (2), and 12th Sch., para. (6), refer to the L. C. A., 1888.

Application to the Crown.

25. The provisions of this Act bind the Crown, but nothing in this Act shall be construed as rendering land owned by or occupied for the purposes of the Crown subject to any charge to which, independently of this Act, it would not be subject.

Crown lands.

It is conceived that there is nothing in the Act which could render Crown lands subject to any new charge, but if affected by a claim, it can be protected or made enforceable by registration.

Short title, commencement and extent.

26.—(1) This Act may be cited as the Land Charges Act, 1925.

(2) This Act shall come into operation on the first day of January, nineteen hundred and twenty-six.

(3) This Act extends to England and Wales only.

Northern Ireland

The L. C. As., 1888 and 1900, did not extend to Scotland or Ireland: ss. 3 and 6 respectively. If and when the new Acts are made applicable to Northern Ireland, this will involve the establishment of new registers, for the protection of equitable interests (not protected by the requirements involving payment of capital to a trust corporation or to not less than two trustees) and the priority of puisne mortgages (L. P. A., 1925, s. 97, 1st Sch., Pt. VII., para. 6; Pt. VIII., para. 5) depend on registration.

[SCHEDULE.

Section 24.

SCHEDULE.

Repeals.

Session and Chapter.	Short Title.	Extent of Repeals.
2 & 3 Vict. c. 11.	The Judgments Act, 1839.	Sections four, seven, ten and eleven.
13 & 14 Vict. c. 43.	The Court of Chancery Lancaster Act, 1850.	Section twenty-four.
18 & 19 Vict. c. 15.	The Judgments Act, 1855.	Sections three, twelve, thirteen and fourteen.
22 & 23 Vict. c. 35.	The Law of Property Amendment Act, 1859.	Section twenty-two.
23 & 24 Vict. c. 115.	The Crown Debts and Judgments Act, 1860.	Section two.
30 & 31 Vict. c. 47.	The Lis Pendens Act, 1867.	Section two.
45 & 46 Vict. c. 39.	The Conveyancing Act, 1882.	Section two.
51 & 52 Vict. c. 51.	The Land Charges Registration and Searches Act, 1888.	The whole Act.
57 & 58 Vict. c. 16.	The Supreme Court of Judicature (Procedure) Act, 1894.	The reference in the Schedule to the Lis Pendens Act, 1867.
63 & 64 Vict. c. 26.	The Land Charges Act, 1900.	The whole Act.
12 & 13 Geo. 5, c. 16.	The Law of Property Act, 1922.	Sections fourteen and sixteen, and the Seventh Schedule.
15 Geo. 5, c. 5.	The Law of Property (Amendment) Act, 1924.	Section six, and the Sixth Schedule.

CHAPTER VII.

SEARCHES GENERALLY.

Searches by purchasers of legal estates.

The following short statement as to the official certificates of search to be obtained and as to the searches to be made, after 1925, by or on behalf of an intending purchaser of a legal estate (*i.e.*, an estate in fee simple in possession and a term of years absolute, that is not depending on the dropping of a life), including an intending mortgagee and a lessee, where the latter is to expend money on the land, may be found useful.

Pending actions.

An official certificate should be obtained of search in the Alphabetical Index at the Land Registry for pending actions, for five years past, against each successive owner, including trustees, personal representatives and mortgagees, disclosed by the abstract, back to the last purchase for money's worth.

If the last purchase was effected after 1925, it should be ascertained whether or not the proper official certificate of search was then obtained; if it was not obtained the search should, as regards names, be carried back either to a purchase occurring before 1926, or to the last purchase after 1925 when a proper certificate was obtained.

After 1925 the registration of a pending action not only gives notice of the matter or claim, but the scope of the matters which can be protected by the registration has been enlarged, hence a purchaser cannot be properly advised to run the risk involved by not obtaining the requisite certificate.

The search for pending actions will cover petitions in bankruptcy filed after 1925.

Continuation searches.

Where completion takes place some appreciable time after the date up to which the certificate extends, application should be made for a continuation certificate of the search.

Palatine Courts.

Registers are kept at Liverpool, Manchester and Preston. No register of pending actions has been kept at Durham since the abolition of the Durham Court of Pleas by the Jud. A., 1873. The searches at the Land Registry will cover all palatine matters.

Annuities or rentcharges terminable with life.

As respects rentcharges and annuities for one or more life or lives, or for a term of years or greater estate terminable on one or more life or lives, created after 25th April, 1855, and before 1st January, 1926, and not created by a marriage settlement or will.

If title is to be made under the S. L. A., 1925 (see s. 72), or under a trust for sale (L. P. A., 1925, s. 28), or by personal representatives (Ad. of E. A., 1925, s. 39), no search therefor will be required, for they will be overreached, and the claim will be shifted to the proceeds of sale, if any. Nor will any search be required against owners who parted with their interests before 26th April, 1855, nor against owners who acquired their title after 1925, for annuities as such cannot be registered against them.

In other cases an official certificate should be obtained of search in the Alphabetical Index at the Land Registry for annuities over the whole period of the abstract against successive beneficial owners capable of creating an annuity or rentcharge. The registration of the rentcharge or annuity will give notice thereof to a purchaser acquiring title after 1925; a continuation search may sometimes be necessary.

Writs and orders.

An official certificate should be obtained of search in the Alphabetical Index at the Land Registry for writs and orders for five years past against each successive owner, including (as respects writs and orders capable of being made after 1925) trustees, personal representatives and mortgagees (where the mortgagees are making title under their power of sale) disclosed by the abstract. The search should be carried back against names to the same extent as in the case of pending actions, see *sup.*; a continuation search may sometimes be necessary.

This search will cover receiving orders in bankruptcy made after 1925.

Before 1926 this search was confined to beneficial owners, save that searches in bankruptcy were made against mortgagees selling under their power of sale, but in view of the extension of the meaning of writs and orders, and to the fact that the abstract will not generally disclose equitable interests created after 1925, the search should extend to all "estate owners." The trustees or personal representatives may have beneficial interests, and a mortgagee selling under his power of sale may have acquired a title free from the equity of redemption.

Deeds of arrangement affecting land.

After 31st December, 1926, an official certificate should be obtained of search in the Alphabetical Index at the Land Registry for deeds of arrangement for five years past against each successive

beneficial owner disclosed in the abstract, the search being carried back against names to the same extent as in the case of pending actions, see *sup.* Before 1927 the period of the search against each name will be for the duration of the register (*i.e.*, back to 31st December, 1888) instead of for five years, or from the time when the owner acquired his title, whichever is the shorter. It is conceived that in this case there is not sufficient reason to search against persons in a fiduciary position. Deeds of arrangement made before 1889 had to be registered within one year: L. C. A., 1888, s. 9.

Land charges, not being local land charges.

As to searches for land charges created before 1889 and not registered under the L. C. A., 1888, see Wms. V. & P., 2nd ed., pp. 588—591; such searches can seldom be required.

As respects land charges created after 1888 and before 1926, and as respects puisne mortgages whenever created (L. C. A., 1925, s. 10 (7)), an official certificate should be obtained of search in the Alphabetical Index at the Land Registry against each successive beneficial owner, and any other person disclosed by the abstract who would be in a position to mortgage the land. The search should be carried back against names to the same extent as in the case of pending actions, see *sup.* There is no provision for the re-registration of a land charge, hence the search must extend over the period of the register (*i.e.*, back to 31st December, 1888), or from the time when the owner acquired his title, whichever is the shorter.

As respects land charges of every class created after 1925, an official certificate should be obtained of search in the Alphabetical Index at the Land Registry against each successive estate owner (of full age), including trustees, personal representatives and mortgagees. The search should be carried back against names to the same extent as in the case of pending actions, see *sup.* The search must extend over the period of the new registers (*i.e.*, back to 31st December, 1925), or from the time when the estate owner acquired his title, whichever is the shorter. Trustees for sale or personal representatives have all the statutory powers of a tenant for life, and personal representatives or other estate owners are accountable for death duties, hence it is clear that this search must be made against them. Mortgagees can create "puisne mortgages" by way of sub-mortgage. A mortgagee making title under his power of sale may have entered into "estate contracts" or "restrictive covenants," or created "equitable easements." But, where a legal mortgagee is merely joining with his mortgagor to make title, it may not always be necessary to search for land charges against him merely because he may have

created a sub-mortgage. A continuation search may sometimes be necessary.

Searches in register.

If the certificate of search in the Alphabetical Index discloses a possible claim, this should be followed up by a requisition for an official certificate of search in the register to which the index refers.

Local land charges.

After 1926 each local register should have been brought up to date in regard to claims arising before 1926; but until the 1st January, 1927, in the case of land in or near a town, the usual inquiries should still be made of the local authority, including drainage authorities, as to sewering, paving, and other like charges, and restrictions on building.

After 1925 an official certificate should be obtained of search from the clerk to the county and borough councils, or other officer prescribed under the Local Land Charges Rules, 1925, against the estate owner for the time being of the land, or against the land generally, for local land charges. In some cases it may be necessary to search against past estate owners. The certificate should show whether there are any drainage or other authorities to whom further application should be made.

Middlesex and Yorkshire deeds, &c.

As regards searches affecting titles to land in Middlesex and Yorkshire before 1926, an official certificate should be obtained of search at the Land Registry, Middlesex Deeds Department (where the title to the land is not registered), or in the Riding register against each successive owner, whether or not he is in a fiduciary position, from the date of the instrument under which he acquired his interest to the date of the *registration* of the instrument by which his interest was disposed of or evidencing the devolution of the interest, both dates inclusive.

Extent of search.

Whether the search should extend over the whole period of the abstract is a question to be considered in each case. If a sufficient official certificate is produced in regard to past searches, the search will commence from the date up to which that certificate relates. No searches are made against lessees under short leases (21 years or less) where the lessee has possession under the lease.

Testators and intestates.

Search against a testator or intestate must be continued against him as well as his personal representatives, devisee or heir, as the case requires, to the date of *registration* of the conveyance, assent or other disposition by the personal representatives, devisee or heir. Where the will had to be registered within a given time and was not so registered, it may be expedient, if L. T. A., 1897, Pt. I. did not apply (*e.g.*, in the case of a legal interest in copy-

holds), to search against the heir before taking a title from the personal representatives or devisee.

Mortgagee selling.

Where a mortgagee sells under his power of sale it is not necessary to search against the mortgagor after the date of the registration of the mortgage; this applies whether the title was made before or after 1926.

Vesting declarations.

As to searches against persons having power to appoint new trustees: T. A., 1925, s. 40 (5), replacing T. A., 1893, s. 12 (4).

Registration confined to legal estates after 1925 in regard to deed registers.

Registration by memorial, whether in Middlesex or Yorkshire, is confined, after 1925, to instruments transferring, creating or evidencing the devolution of a "legal estate" (*i.e.*, a fee simple absolute in possession or a term of years absolute: L. P. A., 1925, ss. 1, 11, 197, 205 (1) (x) (xxvii)), such as conveyances, deeds of exchange, leases, mortgages (including charges by way of legal mortgage), vesting instruments of settled land (not the trust instruments), conveyances on trust for sale (not the settlement of the proceeds of sale), vesting orders, vesting declarations, assents in writing by personal representatives, probates (not the will) and letters of administration.

Thus as respects titles after 1925, an official certificate should be obtained of search in the Middlesex Deeds Department, or at the Riding Registry, against each successive "estate owner" (L. P. A., 1925, s. 1), and, where necessary, against persons having power to appoint new trustees, on the same principles as (see *sup.*) were applicable in the case of searches made before 1925.

Heirs of lunatics.

Though under Ad. of E. A., 1925, s. 51 (2), the heir of a lunatic or defective living and of full age on 1st of January, 1926, may become beneficially entitled to the real estate of the lunatic or defective, it will not be necessary to search against an heir acquiring title after 1925, for all the real estate will vest in the personal representatives under *ib.*, ss. 1—3, nor will any search in a deeds register be made against a devisee, for the title of the personal representatives (all copyholds having been enfranchised) followed by an assent in writing places a curtain over the equitable interests.

Puisne mortgages.

"Puisne mortgages" as defined in L. C. A., 1925, s. 10, Class C (i), so far as the land is within the jurisdiction of a deeds register, will be registered by way of memorial; if any part of the land is outside such jurisdiction a land charge must also be registered at the Land Registry.

Certain land charges in Yorkshire.

General equitable charges, restrictive covenants, equitable easements and estate contracts affecting land within a riding, can be registered as land charges in the local deeds registry in a separate

register or index (*ib.*, s. 10 (6), and see the Land Charges Rules, 1925, in Vol. II.), either instead of or in addition to registration at the Land Registry. But if registered at the Land Registry they need not also be registered at the local registry. It follows that when a requisition for a certificate of search in a riding register is made, the requisition should also extend to the above-mentioned land charges. This does not free the purchaser from the obligation to obtain the usual certificates of search at the Land Registry for land charges generally, and for pending actions, annuities, writs and orders, see *sup.*; though deeds of arrangement, if transferring a legal estate, should be registered by way of memorial, as well as under the L. C. A., 1925.

It is conceived that new rules will be made under the Middlesex Registry Act, 1708, and the Yorkshire Registries Acts, 1884 and 1885, if possible, before 1st January, 1926, in view of the alterations made in the law by L. P. A., 1925, ss. 11, 94, 197; Ad. of E. A., 1925, ss. 1—3, 36.

Tacking in Yorkshire.

Tacking in Yorkshire was abolished by s. 16 of the Act of 1884, but, for the purposes of further advances, is restored, to a limited extent, by L. P. A., 1925, s. 94.

Bankruptcies in Middlesex and Yorkshire.

An order of adjudication in bankruptcy is not a "conveyance" requiring registration in Middlesex: *Re Calcott and Elvin*, 1898, 2 Ch. 460. As to Yorkshire, see Wms. V. & P., 2nd ed., 594. After 1925 the registration of the receiving order as a writ or order under L. C. A., 1925, s. 6, will, it is conceived, be sufficient for all purposes: L. P. A., 1925, s. 198.

Companies.

In the case of land charges for securing money created by a company, registration under Cos. (Consol.) A., 1908, s. 93, is sufficient without registration at the Land Registry: L. C. A., s. 10 (6); but the usual searches must also be made at the Land Registry against companies, as well as the search at the Joint Stock Companies register at Somerset House, kept under ss. 93 and 100 of the Act of 1908. In some cases it may be advisable to search in the *London Gazette* for advertisements of winding-up resolutions and petitions: Act of 1908, s. 185; Cos. (Winding-up) Rules, 1909, r. 27.

Judgments, writs of execution, appointment of receivers, crown debts.

As to judgments, writs of execution on judgments, appointment of receivers and crown debts, see notes to L. P. A., 1925, s. 195, also L. C. A., 1925, ss. 6—7.

Bankruptcies.

As regards receiving orders in bankruptcy made before 1925, the search should in strictness extend back for at least twelve years, but a five years' search is usually deemed sufficient: Dart, 7th ed., 1224—5. Even twelve years may not be sufficient where

the vendor has acquired freehold land within that time: *Re New Land Development, &c.*, 1892, 2 Ch. 138; the position of a vendor or mortgagor is, however, generally so well known as to render these searches unnecessary.

As regards petitions in bankruptcy and receiving orders filed or made after 1925, the official certificates of search advised above as respects pending actions and writs and orders will take the place of searches in bankruptcy.

The legal estate in settled land does not pass to the trustee in bankruptcy of the tenant for life in whom it is vested, but only his beneficial interest: S. L. A., 1925, s. 103.

Dealings by bankrupt with subsequently acquired property.

Where a bankrupt has acquired real or personal property, including things in action, after his bankruptcy, and his trustee has not intervened, transactions by the bankrupt with any person dealing with him in good faith, for value, in respect of such property, *whether with or without notice* of the bankruptcy, are valid against the trustee: Bkcy. A., 1914, s. 47 (1), confirming *Cohen* v. *Mitchell*, 1890, 25 Q. B. D. 262; *Hunt* v. *Fripp*, 1898, 1 Ch. 675; *Re Bennett*, 1907, 1 K. B. 149; *Re Behrend*, 1911, 1 Ch. 687.

Leaseholds.

This principle applied to after-acquired leaseholds: *Re Clayton and Barclay*, 1895, 2 Ch. 212, and it will continue to do so after 1925, notwithstanding registration of the petition or receiving order, for though that gives notice (L. P. A., 1925, s. 198), still, notice is not material if the transaction is carried out in good faith.

Real estate.

The principle applies to transactions with respect to real property completed before 1st April, 1914, where the trustee has not intervened: Bkcy. A., 1914, s. 47 (1). Formerly it did not apply to real estate, whether legal: *Re New Land Development, &c.*, 1892, 2 Ch. 138; *London, &c. Contracts, Ltd.* v. *Tallack*, 1903, 51 W. R. 408; or equitable: *Official Receiver* v. *Cooke*, 1906, 2 Ch. 661; save in the case of real estate acquired by undischarged bankrupts as partners for partnership purposes: *Re Kent Co. Gas, &c.*, 1909, 2 Ch. 195. For further limits of the old principle: *Re Clark*, 1894, 2 Q. B. 393.

As to orders of a Court in bankruptcy affecting a person other than a bankrupt: Wms. V. & P., 2nd ed., 586.

Mortgagees who have been paid off.

Though some words of s. 11 of the Judgments A., 1855, have been repealed by L. P. A., 1925, 7th Sch., that s. still renders it unnecessary to search against mortgagees, who are paid off before or at the time of the conveyance, for writs and orders in respect of judgments and crown debts: *Greaves* v. *Wilson*, 25

Beav. 434; Dart, 7th ed., 1221; as the words repealed are in effect reproduced in *ib.*, s. 195 (3) (iv).

Manor Court rolls.

Though copyholds have been enfranchised by L. P. A., 1922, and the fee simple vested in the persons entitled thereto independently of the title shown by the Court rolls, still these will have to be inspected when the title to acquire the enfranchised land is investigated.

Disentailing assurances and enrolled deeds.

After 1925 disentailing assurances will be confined to dealings with equitable interests: L. P. A., 1925, s. 130; S. L. A., 1925, ss. 13, 18; and will not be enrolled: L. P. A., 1925, s. 133.

As respects disentailing assurances capable of being made before 1926, a search therefor should sometimes be made in the Central Office from the time the tenant in tail attained twenty-one. In the case of copyholds the search may also have to be made in the Court rolls. He may have given security while his estate was in remainder, thereby creating a base fee, and the documents might be in his custody without any default on the part of the creditor.

Though L. C. A., 1925, s. 17, does not apply to searches at the Central Office, an official certificate of search for enrolled deeds will be given if desired. It will only extend to deeds at the Enrolment Department; after two years deeds and recognizances should be—but it is believed are not always—removed to the Record Office (R. S. C., O. 61, r. 13), and search must be made there by the solicitor himself.

If the search discloses an enrolled deed material to the title an office copy of the enrolment can be obtained; this is made evidence of the enrolment: Petty Bag A., 1849, s. 19.

A certificate of enrolment is authorised to be endorsed on every enrolled deed certifying the day of enrolment, and when stamped with the Central Office stamp is evidence of the date of enrolment: *ib.*, s. 18; also Jud. A., 1925, ss. 105, 218.

Endorsements on probates, &c.

Probates and letters of administration should be inspected to see that notice of previous assents or conveyances, by the personal representatives, have not been endorsed thereon pursuant to Ad. of E. A., 1925, s. 36.

Enfranchised land.

It must be seen that documents dealing with a legal estate in enfranchised land, affected by manorial incidents, are endorsed by the steward: L. P. A., 1922, s. 129.

Deposit of powers of attorney and renewable leases.

As to filing powers of attorney: *ib.*, s. 219; and as to office copies of leases (originally renewable) which are deposited: L. P. A., 1922, 15th Sch., para. 20, and rules thereunder.

Registered land.

Where the title is registered under L. R. A., 1925, the same searches will be required in regard to local land charges as if the

title were not registered; in other respects an inspection of the register will, in regard to absolute and good leasehold titles, show all that is required; if the certificate of title has been noted up to date, even an inspection of the register can be dispensed with. If necessary a priority notice: *ib.*, s. 144 (1) (xxiii), can be obtained for securing the priority of registration of an intended dealing. Information can be obtained by telephone or telegram; in no case is it necessary to complete at the Land Registry.

Where a company is registered as proprietor, the registrar is not concerned with registration under the Cos. (Consol.) A., 1908, of an incumbrance unless it is registered or protected on the register of title: L. R. A., 1925, s. 60.

Enquiries of occupiers.

Whether or not the title is registered the usual enquiries must be made of occupiers and tenants to see that they are paying rent to the proper persons, and are not acquiring a title under the Limitation Acts: L. P. A., 1925, ss. 12 and 14; L. R. A., 1925, s. 70 (1) (f) (g); and see *Hunt* v. *Luck*, 1902, 1 Ch. 428.

Possession of deeds.

It must also be seen that the deeds, &c. are in the proper custody: L. P. A., 1925, s. 13.

Life interests and reversions.

As to life interests and reversions, see L. P. A., 1925, ss. 137—8, and notes thereto; and as to acquiring title under an equitable power of appointment: *ib.*, 157.

END OF VOL. I.

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